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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JESSICA TISCHER, individually and
as Personal Representative For the
Spouse and Children of Jacob Tischer,
Decedent,

Plaintiff,

VIDEO
DEPOSITION
Case No.
3:19-cv-00166-jdp

vs.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation,

Defendant.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation,
Defendant/Third-Party Plaintiff,
vs.

PROFESSIONAL TRANSPORTATION, INC.,
Third-Party Defendant.

The video deposition of CHAZ LUX, taken under
and pursuant to the provisions of Chapter 804 of the
Wisconsin Statutes and the acts amendatory thereof
and supplementary thereto, before Stephanie J. Peil,
Notary Public in and for the State of Wisconsin, at
the Fairfield Inn & Suites, 1666 Princeton Crossing,
Eau Claire, Wisconsin, on the 18th day of July,
2019, commencing at approximately 1:08 p.m.

ORIGINAL TRANSCRIPT FILED AT THE

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EXAMINATION INDEX

CHAZ LUX:

By Mr. Banker	5,167
By Mr. Hayden	80,170
By Mr. Cohen	135,171

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ORIGINAL EXHIBITS WITH ORIGINAL TRANSCRIPT
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APPEARANCES:

Paul Banker, Esq., of Hunegs, LeNeave & Kvas,
1000 Twelve Oaks Center Drive, Suite 101, Wayzata,
Minnesota, 55391, appeared representing the
Plaintiff.

Thomas A.P. Hayden, Esq., of Union Pacific
Railroad Corporation, 101 North Wacker Drive, Room
1920, Chicago, Illinois, 60606, appeared
representing the Defendant and Third-Party
Plaintiff, Union Pacific Railroad Corporation.

Michael B. Cohen, Esq., of Quintairos, Prieto,
Wood & Boyer, P.A., 233 South Wacker Drive, 70th
Floor, Chicago, Illinois, 60606, appeared
representing the Third-Party Defendant, Professional
Transportation, Inc.

Videographer: Jacob Arvold.

Also present: Jamie Lukehart Hobbs and Jessica
Tischer.

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PROCEEDINGS

VIDEOGRAPHER: This is the video
deposition of Chaz Lux taken by the Plaintiff
in the matter of Jessica Tischer versus Union
Pacific Railroad Company and Union Pacific
Railroad Company versus Professional
Transportation, Inc., Case No.
3:19-CV-00166-jdp filed in the United States
District Court for the Western District of
Wisconsin. This deposition is being held at
1666 Princeton Crossing, Eau Claire, Wisconsin,
on July 18th, 2019. The court reporter is
Stephanie Peil, and I'm Jacob Arvold, the
videographer. We're going on the record at
1:08 p.m.

Counsel will now please state their
appearance for the record.

MR. BANKER: Paul Banker, B-A-N-K-E-R, on
behalf of the Plaintiff.

MR. COHEN: Michael Cohen, C-O-H-E-N, on
behalf of Third-Party Defendant, Professional
Transportation, Incorporated.

MR. HAYDEN: Thomas Hayden, H-A-Y-D-E-N,
on behalf of Defendant Union Pacific Railroad.

THE VIDEOGRAPHER: Also present.

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OFFICES OF ATTORNEY PAUL BANKER
Q & A COURT REPORTERS, INC.

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<p>1 MS. LUKEHART: Jamie Lukehart, 2 L-U-K-E-H-A-R-T, with Union Pacific. 3 MS. TISCHER: Jessica Tischer, 4 T-I-S-C-H-E-R. 5 VIDEOGRAPHER: The court reporter will now 6 swear in the witness. 7 MR. LUX: Excuse me. Chaz Lux. Ex-PTI 8 employee. 9 CHAZ LUX, 10 being first duly sworn, testified as follows: 11 EXAMINATION 12 BY MR. BANKER: 13 Q. Good afternoon. 14 A. Hi. 15 Q. Could you state your name for the record, 16 please. 17 A. Charles John Richard Lux. 18 Q. Okay. And, Mr. Lux, have you ever had your 19 deposition taken before? 20 A. No. 21 Q. Let me just go over a couple of ground rules 22 for what we're going to be doing. So as you 23 see, the court reporter is taking down 24 everything that's being said and making a 25 transcript of it. And one of the things that's</p>	<p>1 Q. Thank you. And if at any point you need to 2 take a break, let me know, and we'll try to 3 accommodate that. Okay? 4 A. (Indicating.) 5 Q. What, if anything, did you do to prepare for 6 today's deposition? 7 A. Well, we discussed the incident with Jamie, 8 took a written statement, discussed the 9 incident with Charlie Schulz. I believe he's 10 your rep or was or is still. And then this 11 morning I sat with Mike and discussed the 12 upcoming deposition. 13 Q. You -- when you mentioned giving a statement to 14 Jamie Lukehart, was that -- that wasn't just 15 recently; that was a while ago? 16 A. It was very soon after the incident. 17 Q. Okay. Were there any documents that you 18 reviewed to prepare for your deposition today? 19 A. I reviewed the statement that I left with UP, 20 and I reviewed the -- a couple of statements 21 that I had left with Charlie. 22 Q. Okay. 23 A. And -- and that's it, I guess. 24 Q. Okay. Do you have any documents in your 25 possession --</p>
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<p>1 important to that is that when I ask questions 2 and you give me an answer, you need to give 3 that answer audibly. So if you say um-hum or 4 huh-uh, we don't get a clear record. Do you 5 understand? 6 A. Yes. 7 Q. Thank you. Also, it's important, in order to 8 get a clear record, that we not talk over each 9 other, and that's easy to do once we -- 10 A. Understood. 11 Q. -- once we start having a conversation, which 12 is natural. But if I notice that happening, 13 I'm going to -- I'll give you a reminder to 14 wait until I'm done asking the question, and 15 I'll wait for you to give your answer. Does 16 that sound good? 17 A. Yes. 18 Q. Okay. And if there's something that I ask -- 19 if I ask a question today that you don't 20 understand, please feel free to ask me for 21 clarification, and I'll do what I can to clear 22 it up. If you don't ask, I'm going to assume 23 that you've understood the question. Is that a 24 fair assumption? 25 A. Yes.</p>	<p>1 A. No. 2 Q. -- that bear on the -- this lawsuit? 3 A. No. 4 Q. Okay. Let me start by getting a little bit of 5 just background information about you. Where 6 do you currently live? 7 A. Around the corner. 8 Q. In? 9 A. In Eau Claire. 10 Q. In Eau Claire. And how long have you lived 11 there? 12 A. Since '88. 13 Q. And what is the address there? 14 A. 2019 McKinley, M-C-K-I-N-L-E-Y, Road, Eau 15 Claire, 54703. 16 Q. And do you live at that address with anyone? 17 A. My wife. 18 Q. And how long have you been married? 19 A. Now you're asking. 50-plus years. 20 Q. 50-plus years. Congratulations. What is your 21 wife's name? 22 A. Maureen Patricia Lux. 23 Q. Do you have any plans to move from your current 24 address at any time in the next year? 25 A. Not unless I win the lottery.</p>

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<p>1 Q. Okay.</p> <p>2 A. I'd love to, but...</p> <p>3 Q. Best of luck to you on that point. Just tell</p> <p>4 me briefly -- I assume you're a high school</p> <p>5 graduate?</p> <p>6 A. In '94 Control Data, 18 lawyers in the St. Paul</p> <p>7 monster building there, working for Cray</p> <p>8 Research and myself to obtain my permanent</p> <p>9 residence beyond the Green Card.</p> <p>10 Q. Okay. Where are you from originally?</p> <p>11 A. I'm a crazy Hungarian.</p> <p>12 Q. Okay.</p> <p>13 A. So at age 13 during the 56th revolution with</p> <p>14 the Russians, we escaped to the west to Austria</p> <p>15 and then lived in England for 12 years, saw a</p> <p>16 fine veneer of British civilization. I'm a mad</p> <p>17 Hungarian.</p> <p>18 Q. Sure. Where in England did you -- did you</p> <p>19 live?</p> <p>20 A. Started off in Yorkshire. They did not talk</p> <p>21 proper like what I do. And then moved to</p> <p>22 Manchester. That's Lancashire.</p> <p>23 Q. Okay.</p> <p>24 A. And that was 10 years. And after that another</p> <p>25 two, three years in London, England.</p>	<p>1 Canada, Control Data was advertising. And,</p> <p>2 boy, Honeywell Systems -- because I was in</p> <p>3 hardware science -- compared to the Control</p> <p>4 Data at the time, the world's largest, most</p> <p>5 powerful supercomputer you can have, was like</p> <p>6 night and day. So I worked for Control Data</p> <p>7 until, oh, '86 from '68. No. From '71, so</p> <p>8 there's three years of Honeywell in there.</p> <p>9 Control Data I was, again, a site senior</p> <p>10 customer engineer, tech support on many of</p> <p>11 their equipment, moved into supervisory job,</p> <p>12 and then district manager's job at which point</p> <p>13 I had enough, and I went into training, which</p> <p>14 is sanity.</p> <p>15 So '80 we moved to Toronto from Montreal</p> <p>16 and working for Control Data and Control Data</p> <p>17 Institute until '86 when I got called by my old</p> <p>18 colleagues I taught in Control Data who said,</p> <p>19 You silly old fart -- word for word -- says,</p> <p>20 Don't you know Control Data is dying, going</p> <p>21 down the tubes, come on over, we need you bad.</p> <p>22 So I became a Cray Research instructor almost</p> <p>23 overnight, and they sent me down here for</p> <p>24 training at Cray Research in Chippewa. And I</p> <p>25 fell in love with the place, and I told the</p>
Page 10	Page 12
<p>1 Q. Okay. What -- after you graduate -- did you</p> <p>2 graduate from high school?</p> <p>3 A. No. From high school, yes.</p> <p>4 Q. Okay. How about after high school, did you</p> <p>5 have any formal education?</p> <p>6 A. According to my history with Honeywell, Control</p> <p>7 Data, Cray Research, Silicon Graphics, in '94</p> <p>8 these lawyers had assumed that my</p> <p>9 six-and-a-half-years-plus end to end with no</p> <p>10 vacations in between represented the equivalent</p> <p>11 of a Master's.</p> <p>12 Q. Okay.</p> <p>13 A. So I have that in writing. Doesn't do you any</p> <p>14 good, by the way.</p> <p>15 Q. Sure. You mentioned Honeywell, Control Data,</p> <p>16 Silicon Graphics.</p> <p>17 A. Cray Research.</p> <p>18 Q. And Cray Research. Just give me -- what were</p> <p>19 you doing for those companies?</p> <p>20 A. With -- with Honeywell, I -- I start out --</p> <p>21 started out as a physical -- as a -- as a field</p> <p>22 service customer engineer, and so I was doing</p> <p>23 that for two years. And then we moved to</p> <p>24 Canada, become crazy Canucks, eh. And so after</p> <p>25 a year of working for Honeywell again in</p>	<p>1 better half, who is a big city gal, I says,</p> <p>2 Hon, we're going to farm country. You have to</p> <p>3 get some dungarees and a straw hat and big</p> <p>4 beetle-crushing boots. And she's never</p> <p>5 forgiven me ever since.</p> <p>6 Q. Indeed. So how long did you work for Cray?</p> <p>7 A. From '86 until basically '95, '96 when Silicon</p> <p>8 Graphics came into town and bought them out.</p> <p>9 Then because Silicon Graphics had no prepared</p> <p>10 instructors for their stuff they said, You can</p> <p>11 teach that, we need you. So I come close to a</p> <p>12 million miles flying out to Sun -- Sunnyvale,</p> <p>13 Mountain View where their head office was at</p> <p>14 the time and teaching at least a week there</p> <p>15 each month. And then part of that period I was</p> <p>16 teaching all over Europe, most every country,</p> <p>17 and it got as far as Beijing, even.</p> <p>18 Q. Okay. And when did that end, Silicon Graphics?</p> <p>19 A. In 2003 they were about to be bought out, and</p> <p>20 they were going down the tubes, and we</p> <p>21 ex-Cray/Control Data people told them five</p> <p>22 years before, You're making all the stupid</p> <p>23 financial mistakes that Cray had, which is why</p> <p>24 you could buy them out. Anyways, Silicon</p> <p>25 Graphics got bought out by -- I forget the</p>

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<p>1 name. Is it -- no. It's Cray. I forget the 2 name who bought them. 3 Q. Okay. 4 A. And at that point we were laid off of here by 5 the hundreds, thousands, you know. And I had 6 the choice of early retirement, which I took, 7 you know, happily because I didn't want to look 8 at moving to the Bay area for housing situation 9 and back to the big-city-traffic night -- 10 nightmare, so we quite happily stayed here. 11 Q. What did you do after you took early retirement 12 from Silicon Graphics? 13 A. I had fun for a couple of years. I did some 14 traveling and some more, and I was ready to buy 15 a house -- a lot, actually, on which to build 16 in Costa Rica for our retirement. And my 17 beloved being Scottish said, No way, that's too 18 hot, so I had to give up on that idea. But she 19 being Scottish, she always wanted to have for 20 our retirement a little stone cottage up in the 21 Highlands they call the -- good memory, but 22 short. What did they -- a but and ben, what 23 you see on TV these days, when unfortunately my 24 friend, an ex-Wall Street broker, cut it short. 25 He made millions in real estate between Chicago</p>	<p>1 such is Dwayne Bettler (ph). He's in jail for 2 15 years, about to come out. But what he did 3 very quickly was took a lot of retirees', old 4 folks', money, Bernie Madoff scheme. He bought 5 80, \$100,000 collector's coins, put them 6 amongst the change in his pocket and walked 7 through the bor -- border, and nobody can trace 8 that money. FBI promised me that they're not 9 to give up, but they have after six months. 10 The guy that promised is in a different 11 department, so they have done nothing, which 12 boils down to, Victim, good luck, you know. 13 Some of the victims that were well-monied hired 14 a lawyer to try and re -- get some more money 15 out of the prisoner, but I don't know if 16 anybody's been successful. 17 Q. So was it as a result of that that you began 18 working again? 19 A. Yes. I went to work for Bankers Life -- Life & 20 Health and walked away utterly disgusted with 21 the health-care-for-profit approach coming from 22 Europe. 23 Q. Sure. 24 A. The American health care system sucks. They 25 think they are top of the world, but they're</p>
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<p>1 and Milwaukee, so he said to me, Chaz, first of 2 all, give me all your retirement funds because 3 I can double it for you of what you're getting. 4 I was with American Express. 5 He came with me to explore the Scotland 6 real estate market, and we were horrified. 7 This is '06-ish time frame. What we had found 8 is the whole ex-British empire had come, money 9 people come to southern England and bought up 10 southern England. So we got all these 11 Englishmen flush as can be, and they came up 12 and bought up Scotland, driving their prices up 13 equivalent to what happened to California, 14 which is like 5,000 immigrants every month and 15 with money. So there was no way that he could 16 see me afford a Scottish property. So the 17 unmentionable -- I'll come to that in a 18 second -- talked me into refinancing my 19 already-paid-off house and investing that also 20 to catch up with the housing situation in 21 Scotland. 22 And then I went on a vacation with my 23 beloved to Glasgow, got a call in the middle of 24 the night, Mr. Lux, this is the FBI, we caught 25 him. Do you know such and such? The such and</p>	<p>1 like number 37 worldwide in how good you -- you 2 provide health care. 3 Q. So what did you do after Bankers Life & Health? 4 A. I was torturing a tennis ball with a partner 5 who said, Do you know these Bankers products, 6 we're opening a new department in Pavek Brokers 7 for fixed products, and you can start the 8 department up. We have a database of a few 9 thousand Wisconsin union members that are in 10 the process of retiring. And, of course, 11 what -- I wasn't allowed. And he had a break 12 up with the lawyer that were -- they were 13 sharing supposedly the database, and he just 14 took his people, never told me anything, and 15 left me there. So I'm just sitting in this 16 empty office saying, What's going on? And the 17 broker came up to me and said, Chaz, we love 18 you, but you're no good to us unless you get 19 your securities license, so I got my securities 20 license. 21 And for the next year I was trying to 22 sell -- this is '07, '08 -- guess what? Real 23 estate-based products that were the cause for 24 the financial disaster in '07, '08, and I sold 25 nothing. I had no income. So I had to start</p>

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<p>1 looking for something immediate, and I've been 2 one sort or another of a driver for many 3 different companies, including PTI. 4 Q. So when did you first start working for PTI? 5 A. You tell me. I don't remember. Because 6 shortly after -- so within the last five years, 7 I've been through cancer treatments, and so I 8 think an ex-PTI employee, who it was a manager 9 at -- good memory, but short. I should have 10 all this written down. I do, but I -- I didn't 11 think I'd need it -- invited me to come and 12 drive for them. Oh, Medical Logistics Systems, 13 Network Global Systems, whatever, was the 14 company and couple bucks more a month and a 15 much better company than PTI at the time. So 16 then I had to go into the first treatment, 17 which was like six months of misery, followed 18 by some hospitalization, whatever. 19 And then I started driving again, I think, 20 back to PTI for another -- I don't know how 21 long -- two months. No. That's when I was off 22 at the job with Medical Logistics. And so that 23 meant driving 300 miles a day through central 24 Wisconsin, stopping at farms, picking up milk, 25 and carrying some heavy totes, and it wasn't</p>	<p>1 license. Don't ever drive for -- oh, what's 2 their name? It's an English company, family 3 owned, and where -- they treat their drivers 4 the worst to the point where one of the family 5 members so disgusted that he went and 6 started -- C.R. England -- another driving 7 company called Prime. 8 Q. But -- so if I understand what you're saying, 9 that starting in '09 you began to do some 10 commercial driving for -- 11 A. Yes. 12 Q. -- a number of companies -- 13 A. Yes. 14 Q. -- including PTI? 15 A. Yes. 16 Q. And that you went -- 17 A. To -- 18 Q. -- back and forth between them and -- 19 A. And during that time, I had six months at a 20 time, three treatments of chemo. 21 Q. Okay. 22 A. Okay. 23 Q. And I -- I wanted to follow up on that. You'd 24 mentioned that you'd been having some cancer 25 treatments.</p>
Page 18	Page 20
<p>1 really my -- my speed, so I gladly went to 2 Medical Logistics. 3 Q. And I just want to be sure that I have the -- 4 the time frame in mind, so -- 5 A. I'm sorry, but -- 6 Q. Yeah. 7 A. -- I know my mind is mush when it comes to 8 timing, duration, exactly what years. 9 Q. Sure. 10 A. I have it written down. 11 Q. Yeah. But I just want to get a ballpark idea. 12 A. Right. 13 Q. So it sounds like -- 14 A. So I would say -- I would say '07 I came back 15 to being embezzled, no money whatsoever, 16 started working for Bankers for six to nine 17 months, so that would be taking me into '08 18 time frame. And then '08 went to Pavek 19 Brokers. And Precision Retirement Group is the 20 friend of my friend's company, and they were 21 sharing office with Pavek Brokers. So in '09 22 Pavek disappeared down south somewhere and 23 closed up shop here. I didn't mind because I 24 had no income from them anyhow. So then I 25 started driving, so I got my commercial driving</p>	<p>1 A. Um-hum. 2 Q. What -- what are the cancer treatments for? 3 A. Waldenstrom macroglobulinemia. It's a form of 4 non -- multiple myeloma or -- or non-Hodgkin's. 5 Q. And what is the status of that? Is that in 6 remission right now, or are you in a treatment 7 for that? 8 A. They tell me that it'll never be in remission. 9 It will always be present, and it has to be 10 monitored every two, three months, which is 11 where I am right now. 12 Q. And is that -- is the chemotherapy, that's 13 over? 14 A. Yes. 15 Q. Okay. What I'd like to do is focus you on 16 August 12th, 2017. 17 A. Okay. 18 Q. And in particular that day because of an 19 incident involving Jacob Tischer. 20 A. What was -- what was the date for his in -- 21 incident? 22 Q. August 12th, 2017. 23 A. So the same day that -- it couldn't have been 24 the same date. It had to be earlier, his -- 25 Q. Tell us what you mean.</p>

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<p>1 A. -- incident. Well, when did he fall on the 2 ground, and I -- I took him to the depot and... 3 Q. Well, I'm going to ask you some questions about 4 that, so -- 5 A. Okay. 6 Q. And see what you remember. So I don't -- 7 A. Sure. 8 Q. I'm not going to tell you a bunch of facts. 9 I'm just going to ask you some questions. 10 A. Fine. 11 Q. I'm going to start by saying I want to focus on 12 August 12th, 2017. Do you remember an incident 13 involving Jacob Tischer? 14 A. Absolutely. 15 Q. Do you remember the day that that happened? 16 A. I don't know of the date. 17 Q. Okay. If I represent to you that it's 18 August 12th, 2017, do you have any reason to 19 disagree? 20 A. None. 21 Q. Okay. So I want to -- I want to focus on that 22 day in particular. Were you working for PTI at 23 the time? 24 A. Is this the date of the incident? 25 Q. Yes. I mean to be talking about the date of</p>	<p>1 Q. But you had also done that route when you -- 2 A. Exactly. 3 Q. -- previously worked for them? 4 A. Yes. 5 Q. Okay. Before August 12th, 2017, did you know 6 Jacob Tischer? 7 A. I couldn't remember. At the most I worked with 8 him maybe one month during that time frame. 9 Q. In the one month leading up to August 12th -- 10 A. The incident, yes. 11 Q. -- 2017? And when you say you worked with him, 12 what do you mean? Do you mean as a -- 13 A. I chauffeured him between Altoona yard and 14 where he needed to go. Most of the time that 15 was the yard at Norma in Chippewa Falls. 16 Q. So when you say you worked with him over a 17 period of a month -- 18 A. No, no. There were -- one day drive him to 19 Norma and back, and then months later go to 20 Norma or drive him to Norma and bring him back. 21 Q. Okay. So what you're saying is there had been 22 one previous time that you worked with him? 23 A. As far as I can tell. 24 Q. Okay. In -- plus the date of the incident? 25 A. Yes.</p>
Page 22	Page 24
<p>1 the incident. 2 A. Okay. Then I was, absolutely. Yes. 3 Q. Okay. What were you doing for PTI on the -- 4 A. I was a van driver in the yards for P -- for 5 UP. 6 Q. And when you say "the yards," what do you mean? 7 A. Altoona yard, Norma in Chippewa, and there is 8 about 10 other places where we had to 9 chauffeur, taxi the UP employees back and 10 forth. 11 Q. Before August 12th of 2017, how long had you 12 been doing that van driving job for UP around 13 Altoona? 14 A. Well, that was my second employment time with 15 PTI, and so the second time I was, I believe, 16 around two, three months with PTI. 17 Q. And had you been doing that route, chauffeuring 18 people around Altoona and -- 19 A. Yes. 20 Q. -- and Norma, for about two, three months? 21 A. Yes. 22 Q. Okay. 23 A. Plus the previous time I worked for them, and 24 I'm not sure how long I worked for them. 25 Possibly up to a year.</p>	<p>1 Q. Okay. And when you were doing that 2 chauffeuring and driving, were -- was that all 3 that you were doing? 4 A. Yes. 5 Q. And so tell me -- tell me the first time that 6 you drove Mr. Tischer or chauffeured Mr. 7 Tischer, what exactly did that consist of? 8 A. I'm not clear -- freely admit -- but every time 9 I took somebody to Norma, they would have to 10 assemble, brake test, etc. a train, which may 11 go to Minneapolis or to -- back to here on to 12 somewhere else. 13 Q. And we talked kind of about your career 14 history. Have you ever had any employment in 15 the railroad industry other -- 16 A. No. 17 Q. -- than driving for PTI? 18 A. No. 19 Q. Okay. So I take it you were not participating 20 in any of the actual operations activities that 21 the crews -- 22 A. I'm just a taxi driver that takes the crew to 23 the train where they'll do whatever they have 24 to do. 25 Q. Okay. And so what sort of -- when you say that</p>

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1 they're going up to --
 2 A. Norma.
 3 Q. -- Norma, are you -- I -- I take it that the
 4 crew is traveling on the --
 5 A. Sometimes I would drive them because the train
 6 was already there, or I'd follow the train up
 7 to Norma because they had to take a train up
 8 there.
 9 Q. Okay. So how about focusing specifically on
 10 the date of the incident, August 12th, 2017. I
 11 want to walk through that --
 12 A. Sure.
 13 Q. -- your memory of that day. So let's start
 14 with when did you come on duty that day?
 15 A. I assume it was a day shift, which starts at 6
 16 a.m.
 17 Q. And did you -- were you working regularly on
 18 the day shift at that time?
 19 A. Yes.
 20 Q. And was that a -- like a five-day-a-week,
 21 two-day off sort of schedule?
 22 A. Yes.
 23 Q. What was the first con -- well, let me -- what
 24 did you do between, say, 6 a.m. and 2 p.m.?
 25 A. Handled other crews in the yard. So as a yard

1 taxi for any UP crew, I would -- I would take
 2 them from one train to another, whatever.
 3 Q. How would you get your instructions about what
 4 your job assignment was?
 5 A. We have radio, so -- and the phone. And so I
 6 would be radioed or phoned asking me to become
 7 a yard driver for the rest of the day or
 8 whatever. So I'm -- I'd be sitting next to a
 9 train that they are assembling, preparing for
 10 elsewhere.
 11 Q. Okay. So let's start at 2 p.m. on August 12th,
 12 2017.
 13 A. Um-hum.
 14 Q. When did you first have any contact with Mr.
 15 Tischer?
 16 A. I can't remember if I drove him to Norma or
 17 they were taking a train up to Norma, but I
 18 ended up at Norma watching him working on a
 19 train.
 20 Q. Tell me what you remember about watching Mr.
 21 Tischer in Norma.
 22 A. He had to get from one end to the other end of
 23 train and off there in between for all the
 24 tests that they do with the train. And so all
 25 that time there was no indication that he was

1 not well.
 2 Q. Are you sitting in the vehicle as --
 3 A. Yes.
 4 Q. -- you're making these observations?
 5 A. Yes.
 6 Q. Okay. Do you know what time it was that you
 7 got to Norma?
 8 A. It's a 15-minute drive, so whenever they asked
 9 me. If it was around 2 o'clock, it would be
 10 soon after 2 I'd be in Norma.
 11 Q. Let me -- let me back up and -- and cover
 12 something I skipped over. So the -- the PTI
 13 vehicle that you're driving, do you remember
 14 what kind of vehicle that was?
 15 A. The choices were Ford Explorer or some kind of
 16 a minivan. Probably a Chrysler or Dodge.
 17 Q. Do you keep -- did you keep at that time any
 18 sort of log book about what you're --
 19 A. Daily, constantly, hourly, yes.
 20 Q. Okay. And was that to record kind of the job
 21 assignments you'd been given?
 22 A. Absolutely. And also to check my wages.
 23 Q. Okay.
 24 A. That they would pay me for everything I worked.
 25 Q. It would -- somehow your recordkeeping would

1 tie into the -- to the payroll system?
 2 A. Yes.
 3 Q. Okay. What did you do with that log book after
 4 it was -- after you filled it out?
 5 A. It was a paper copy of what was entered into
 6 the computerized system inside the cars.
 7 Q. Okay.
 8 A. So that was an automatic transfer to head
 9 office, wherever.
 10 Q. So when you say a "computerized system," are we
 11 talking like a laptop or a tablet?
 12 A. It's not -- it's a tablet-size specialized
 13 computer for entry of your driving records.
 14 Now most semis have that today.
 15 Q. So you would keep a paper copy and at the end
 16 of the day enter it into the computer?
 17 A. The entering into the computer I think started
 18 at the time I started to move or start a job --
 19 Q. Okay.
 20 A. -- for PTI.
 21 Q. Did you -- what did you then do with the paper
 22 copy after you'd entered the data into --
 23 A. Oh, I had it at home for a while, like all
 24 other evaluations, etc. Finally ends up being
 25 shredded.

1 Q. Okay. Did you ever see a report back from PTI
2 about the data that you entered into the
3 computer?
4 A. No. I had online wages defining what is the
5 result of my entries.
6 Q. Okay. Do you know whether the -- the PTI
7 vehicle that you were operating on August 12th,
8 2017, was equipped with any sort of GPS system?
9 A. Yes.
10 Q. Do you --
11 A. All these tablet-size minicomputers have GPSs.
12 Q. And do you know what sort of -- whether that
13 GPS data is reported or recorded in any way?
14 A. As far as I know, PTI could tell you to the
15 yard where you were at the time.
16 Q. Okay. Have you ever seen a report for a
17 particular vehicle from PTI for where a car or
18 a --
19 A. No.
20 Q. -- a van has been?
21 A. No.
22 Q. Do you have a specific recollection -- now
23 we're switching back to kind of the chronology.
24 Do you have a specific recollection of what
25 time of day it was that you got to Norma?

1 A. I would say shortly after two, and then the
2 crew, that's Jake and his engineer Neil, were
3 asked, and so they asked me to transport them
4 back -- or back to Altoona yard.
5 Q. Let me just stop you there. You mentioned a
6 name Neil. Who is Neil?
7 A. Neil -- I'm not sure of his last name,
8 Franchuk -- is the engineer that Jake worked
9 with, so Neil is the engine -- the driver.
10 Q. Okay. So you were observing Mr. Tischer in
11 Norma do his job?
12 A. Yes.
13 Q. And I think you'd said you didn't notice
14 anything wrong with him --
15 A. True.
16 Q. -- at that point. So let's pick the story up
17 there. What happened next?
18 A. Well, I was asked to bring them or meet them
19 with the train at Altoona yard. Now, I
20 remember when the train got into Altoona. It
21 was around -- I don't remember the time
22 exactly. I would think around 4 p.m.-ish. And
23 so I met Jake -- or dropped Jake at the west
24 end of the train that they were going to work
25 on further, and I watched him walking down the

1 train and checking brakes and whatever.
2 Q. And I -- just to interrupt, are we in Altoona
3 at this --
4 A. We're in Altoona yard.
5 Q. Okay. So we've --
6 A. West end.
7 Q. We've been to Norma, and we've come back to
8 Altoona?
9 A. Correct.
10 Q. And you're on the west end of the yard?
11 A. Right.
12 Q. Okay. So what -- what did -- what happened
13 next?
14 A. Well, so he did a lot of work with the train,
15 but then he had to come back into the van and
16 go to another part of the train. And when I
17 took him there, he got out fine and worked some
18 more. And at this point we're at the east end,
19 which is where their yard depot is, called
20 shanty, at which time he tried to undo his seat
21 belt with his left hand and had some trouble,
22 so he used his right hand to open the seat belt
23 and then open the door and went into the
24 portable on-the-spot Johnny.
25 Q. And let me ask you a question there. So at the

1 point when Mr. Tischer gets back into the van
2 to go to the east end of the yard, were you
3 talking with him at all at that point?
4 A. No.
5 Q. Okay. So you're just driving him --
6 A. Correct.
7 Q. -- down to the east end of the yard? You
8 talked about watching him have some trouble
9 with his seat belt. Can you --
10 A. Yes.
11 Q. -- tell me -- I want to focus in on that. I
12 mean, when you say trouble with the seat belt,
13 what kind of trouble are we talking about?
14 A. Well, if you can understand, I would have
15 trouble undoing my seat belt because I'm in a
16 different van with different seat belt buttons
17 and locations, so I -- I thought nothing of
18 that.
19 Q. Okay. So what happened next? He got out to --
20 A. He went into the potty.
21 Q. Okay.
22 A. Portable potty. And when he came back out, he
23 started stumbling on the uneven gravel that the
24 yard consists of, which I found kind of -- you
25 know, what's wrong with him, why is he

1 stumbling. And he came back to the van at the
2 same time his engineer came back having talked
3 with the yard master, Marvin, and they were
4 telling me that they are asked to go back to
5 Norma to continue working on a train there. So
6 Marvin expected Jake to go back with me to
7 Norma along with Neil, the engineer. And at
8 that time I'm saying to Marvin, He's not well,
9 he's stumbling around, do not send him.
10 Q. Let me ask you a question there. So you've
11 mentioned Marvin. Do you -- is that a first
12 name or a last name?
13 A. I think it's his last name. He's the Altoona
14 yard manager of the day -- of --
15 Q. Okay.
16 A. -- the shift.
17 Q. Did you know him before August 12th --
18 A. Yes.
19 Q. -- 2017? Do you know what his first name was?
20 A. Mark, I believe.
21 Q. And at the point of this conversation that
22 you're describing about going back to Norma,
23 had you spoken at all to the engineer,
24 Mr. Franchuk?
25 A. Well, he and Jake came up to my cab ready to

1 transport back to Norma, and I -- at which
2 point I said, No, no, Jake is not well, you --
3 you shouldn't send him.
4 Q. And so to that particular point, who are you
5 saying that to?
6 A. Marvin. Marvin and the group of other UP
7 employees.
8 Q. Okay. So I want to make sure I understand the
9 scene. Are you inside or outside of your van?
10 A. I'm sitting in my van.
11 Q. And Mr. Tischer and Mr. Franchuk come up to the
12 van?
13 A. The driver's window, yeah.
14 Q. And they tell you they're going back to Norma?
15 A. Right.
16 Q. And Mr. Marvin is there as well?
17 A. He stood with another group of engineers -- I
18 forget the name -- conductors in a circle maybe
19 20, at the most, yards from me.
20 Q. Okay. So they're a little ways away?
21 A. Yeah.
22 Q. And do you know who else was standing with
23 Mr. Marvin?
24 A. I don't remember.
25 Q. And then you said to Mr. Marvin when he's 20 or

1 so yards away, No --
2 A. No, no, don't send him, he's not well.
3 Q. Okay. So are you --
4 A. I'm -- I'm shaking my hands like this
5 (indicating) to him --
6 Q. Okay.
7 A. -- saying, He's not well, don't send him.
8 Q. And so are you having to shout to communicate
9 that over that distance, or how is he -- how is
10 that -- how are you getting your message
11 across?
12 A. I guess I shouted, yeah.
13 Q. Okay. And at some point did he come closer to
14 talk to you?
15 A. No.
16 Q. Okay. So what -- what happened next after you
17 say to Marvin, No, no, he's -- he -- and the --
18 A. Well --
19 Q. -- he being Mr. Tischer -- is not well?
20 A. They both went back to talk to Marvin, and then
21 Marvin, I assume, asked Neil, the engineer, to
22 take him back to the depot, which is outside
23 the yard.
24 Q. Now, are you able to say when -- what time this
25 is taking -- this conversation is taking place?

1 A. This is where I -- my memory of the time at the
2 -- the timing at this point has, you know,
3 became irrelevant to me.
4 Q. Sure.
5 A. So I would say between 4 and 5 p.m. 6 p.m. at
6 the most. I don't know.
7 Q. Okay. But so was it -- was the only
8 communication that you had with Marvin, which
9 you've described where you said -- you know,
10 waved your hands as Marvin's 20 yards away and
11 you said, No, Tischer -- Tischer is not well?
12 A. Correct.
13 Q. So did you have any other conversations with
14 either Tischer or with Franchuk?
15 A. No, I did not.
16 Q. Okay. So if I understand what you're saying
17 then, Franchuk and Tischer went to talk to
18 Marvin?
19 A. And then came back ask -- and telling me that
20 Marvin wants me to take him back to the Altoona
21 depot where his family will pick him up.
22 Q. And so what I want to get a sense of is how
23 long did this conversation -- I understand
24 you're not able to say exactly what time of day
25 it started. But once it started, how long did

<p style="text-align: right;">Page 37</p> <p>1 the conversation last?</p> <p>2 A. One, two minutes.</p> <p>3 Q. From the point that you waved your hands?</p> <p>4 A. Correct. Well, actually -- yes.</p> <p>5 Q. Okay. What happened next?</p> <p>6 A. So Neil stayed behind, and I took Jake back to</p> <p>7 the depot.</p> <p>8 Q. Now, were you able to make any observations of</p> <p>9 Mr. Tischer -- let's start with the point that</p> <p>10 he comes out of the porta potty where he's</p> <p>11 stumbling.</p> <p>12 A. Right.</p> <p>13 Q. Did you make any further observations of him?</p> <p>14 A. No.</p> <p>15 Q. Okay. So did you have any chance to speak with</p> <p>16 him during that time?</p> <p>17 A. Yes.</p> <p>18 Q. Tell me about that.</p> <p>19 A. We didn't have anything to say.</p> <p>20 Q. Okay.</p> <p>21 A. I was just about to drive him back to the</p> <p>22 depot.</p> <p>23 Q. Okay. So you do that, I take it?</p> <p>24 A. Yes.</p> <p>25 Q. Tell me what happened next.</p>	<p style="text-align: right;">Page 39</p> <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 A. Not even that.</p> <p>4 Q. Okay. So now we're at the depot. You've gone</p> <p>5 inside. There's nobody there. You're looking</p> <p>6 for help. What happens next?</p> <p>7 A. Well, once I was certain there was nobody to</p> <p>8 help, I went back to the van to talk to Jake.</p> <p>9 Q. And what happened?</p> <p>10 A. I found him lying around the rear wheel on the</p> <p>11 passenger's side on the floor, so he managed to</p> <p>12 get out, and he was lying on the floor. At</p> <p>13 which stage I tried to pick him up, bring him</p> <p>14 back to the passenger door.</p> <p>15 Q. And you said found him lying on the --</p> <p>16 A. Floor --</p> <p>17 Q. -- floor --</p> <p>18 A. -- on his back.</p> <p>19 Q. Do you mean the ground outside the --</p> <p>20 A. On the ground outside the van, yes.</p> <p>21 Q. Okay.</p> <p>22 A. In the parking lot.</p> <p>23 Q. You tried to pick him up. What happened next?</p> <p>24 A. Well, he was deadweight, and I could not.</p> <p>25 Q. So what did you do next?</p>
<p style="text-align: right;">Page 38</p> <p>1 A. Well, within site of the depot in the streets</p> <p>2 of Altoona -- actually, right next to the post</p> <p>3 office there, if you know where it is, he</p> <p>4 spewed a volcanic on the inside of the car, so</p> <p>5 I stopped the car next to the curb, and he</p> <p>6 opened the door and finished being sick</p> <p>7 outside. At which point I said, Okay, shall --</p> <p>8 shall we go back, and he said fine. Because we</p> <p>9 were inside of the -- in sight of the depot, I</p> <p>10 drove him straight to the entrance door of the</p> <p>11 depot, and he tried to again undo his seat</p> <p>12 belt. It didn't work too well, but then he</p> <p>13 tried to open the door and get out, and he</p> <p>14 couldn't. So I said, Stay put in the</p> <p>15 passenger's seat, I'm going to go inside the</p> <p>16 depot and bring some help. I went inside the</p> <p>17 depot, and there was nobody there.</p> <p>18 Q. Let me just back up a step. So when you're --</p> <p>19 when you're on the east end of the yard where</p> <p>20 the porta potty is, how far of a drive is that</p> <p>21 from --</p> <p>22 A. Two to three miles.</p> <p>23 Q. -- there to the depot?</p> <p>24 A. Yes.</p> <p>25 Q. Two to three miles?</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Within a minute of my scratching my head, What</p> <p>2 shall I do with him, Marvin arrived and helped</p> <p>3 me to -- try to help me to lift him back into</p> <p>4 the passenger's seat. We couldn't.</p> <p>5 Q. Was -- were you speaking with Mr. Tischer at</p> <p>6 this point when he's -- when he's on the</p> <p>7 ground?</p> <p>8 A. I don't believe so.</p> <p>9 Q. Okay. How about when he was -- when he was</p> <p>10 sick inside the car, were you able to speak</p> <p>11 with him then?</p> <p>12 A. Oh, yes.</p> <p>13 Q. And what -- what was -- what was he saying?</p> <p>14 A. He wasn't saying anything. He was being sick.</p> <p>15 Q. Okay.</p> <p>16 A. And I said, Well, just hang on. We're --</p> <p>17 there's the depot. We'll drive there and get</p> <p>18 some help.</p> <p>19 Q. Okay. So when Mr. Marvin arrives at the depot,</p> <p>20 do you have a conversation with him?</p> <p>21 A. Oh, absolutely.</p> <p>22 Q. Tell me about that.</p> <p>23 A. Well, he saw me trying to lift Jake off the</p> <p>24 ground, and I said, Marvin, come and help me,</p> <p>25 please, he's too heavy.</p>

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<p>1 Q. Sure.</p> <p>2 A. And the two of us, we could not lift him. At</p> <p>3 which point, within a minute or two, two</p> <p>4 policemen came on the scene.</p> <p>5 Q. Okay. So what happened next?</p> <p>6 A. Well, they started asking him innumerable --</p> <p>7 in -- questions to which, lying on his back</p> <p>8 unable to stand up, he was very coherently</p> <p>9 answering all the questions, and that surprised</p> <p>10 the heck out of me. I mean, you know, I never</p> <p>11 thought of anything major other than, Boy, is</p> <p>12 he heavy.</p> <p>13 Q. Sure. What happened next?</p> <p>14 A. The two policemen tried to pick him up, put him</p> <p>15 in my van, but could not. So after they had</p> <p>16 finished questioning him, they said, Well, the</p> <p>17 ambulance is on the way, we got to go back to</p> <p>18 the police station, or some -- something like</p> <p>19 that. I don't remember them being present at</p> <p>20 the time -- time the ambulance crew came out</p> <p>21 and tried to lift him and could not with my</p> <p>22 help. So now there's four of us trying to lift</p> <p>23 him. Deadweight is bad. The ambulance crew</p> <p>24 asked him the same questions the policemen had</p> <p>25 and at least 10 to 20 questions to which he</p>	<p>1 other than you, Mr. Marvin, Mr. Tischer and the</p> <p>2 first responders?</p> <p>3 A. No.</p> <p>4 Q. What happened after they got Mr. Tischer on the</p> <p>5 stretcher?</p> <p>6 A. They put him in the ambulance and drove away.</p> <p>7 Q. Okay. What did you do next?</p> <p>8 A. Well, I was past my shift time, so I made sure</p> <p>9 that I can go and went home.</p> <p>10 Q. Okay. Did you ever hear anything more about</p> <p>11 this?</p> <p>12 A. Well, the -- the office at the depot told me</p> <p>13 that I would be interviewed by Jamie, which I</p> <p>14 was.</p> <p>15 Q. Okay. And when did that take place?</p> <p>16 A. I don't remember.</p> <p>17 Q. Was it shortly after the incident of the --</p> <p>18 August 12th?</p> <p>19 A. I think there were days in between.</p> <p>20 Q. And what did the interview consist of?</p> <p>21 A. Basically what you're doing right now. I was</p> <p>22 speaking into a microphone to be recorded.</p> <p>23 THE WITNESS: True?</p> <p>24 A. And when they heard my story, that was it.</p> <p>25 BY MR. BANKER:</p>
Page 42	Page 44
<p>1 replied amazingly still coherently.</p> <p>2 Q. Okay. What happened next?</p> <p>3 A. Well, the two ambulance crew could not put him</p> <p>4 on a stretcher, lift him onto a stretcher,</p> <p>5 until almost immediately a 6-foot-17 (as</p> <p>6 spoken) ambulance member came and helped them</p> <p>7 put him onto a stretcher into the ambulance.</p> <p>8 Q. Okay. Are you talking with the ambulance crew</p> <p>9 at all?</p> <p>10 A. No.</p> <p>11 Q. Is Mr. -- are you with Mr. Marvin at that</p> <p>12 point?</p> <p>13 A. I believe he waited until the ambulance took</p> <p>14 him away.</p> <p>15 Q. Is Mr. Marvin talking at all with the ambulance</p> <p>16 crew or the police?</p> <p>17 A. He was present.</p> <p>18 Q. Sure. But sitting here today, you don't recall</p> <p>19 --</p> <p>20 A. No.</p> <p>21 Q. -- anything? So in terms of the explanation to</p> <p>22 the police and the ambulance crew, that's all</p> <p>23 coming from Mr. Tischer?</p> <p>24 A. The answers to their questions, yes.</p> <p>25 Q. Okay. Was there anyone else there at that time</p>	<p>1 Q. Okay.</p> <p>2 A. I could go.</p> <p>3 Q. Did you ever receive a copy of that statement?</p> <p>4 A. I don't think so. I'm not sure.</p> <p>5 Q. Okay. Beyond giving that statement, did you</p> <p>6 ever have any conversations with anyone about</p> <p>7 this?</p> <p>8 A. Yes.</p> <p>9 Q. Who did you talk with?</p> <p>10 A. Charlie Schulz is the Tischer family lawyer,</p> <p>11 representative, assistant, whatever.</p> <p>12 Q. Okay. When was that?</p> <p>13 A. Weeks after the incident.</p> <p>14 Q. Okay. Other than the two contacts you've</p> <p>15 described, did you ever have any conversations</p> <p>16 with anyone else about this?</p> <p>17 A. Just Mike this morning. That's it.</p> <p>18 Q. Okay. Did you ever speak with Mr. Franchuk</p> <p>19 about it?</p> <p>20 A. Neil, we may have bumped into each other. At</p> <p>21 which point I just questioning if Jake is all</p> <p>22 right and found out that, no, he had died.</p> <p>23 Q. Sure. How about Mr. Marvin, did you ever have</p> <p>24 any other conversations with --</p> <p>25 A. No.</p>

11 (Pages 41 to 44)

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1 Q. -- Mr. Marvin? Other than the waving to him
 2 that you did from the car when you were out by
 3 the porta potty and asking him to help pick
 4 Jake up off the ground when he's by the depot,
 5 did you ever have any other conversations with
 6 Mr. Marvin?
 7 A. Not that I remember.
 8 Q. Okay. Did you make any other -- you know,
 9 we've talked kind of -- I think we've talked
 10 through the chronology of kind of how you were
 11 involved. But during that time that you were
 12 involved and in contact with Mr. Tischer, did
 13 you make any other observations of him or
 14 symptoms that he was exhibiting?
 15 A. Well, after I got home and thought it all out,
 16 I was wondering to myself if -- is this some
 17 form of a stroke, but never discussed it with
 18 anybody. I had a colleague -- several
 19 colleagues at Cray Research that went similar
 20 ways.
 21 Q. Had you had any previous experience in your
 22 personal life with people having strokes while
 23 you were with them?
 24 A. No.
 25 Q. Have you ever had any first-aid or medical

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1 training about recognizing signs --
 2 A. No.
 3 Q. -- of distress? No?
 4 A. No.
 5 Q. In particular working for PTI, was there any
 6 sort of training, first-aid training or --
 7 A. Absolutely.
 8 Q. Okay. Well --
 9 A. First aid, CPR, and emergencies, what you do in
 10 case of emergencies and so on, yeah.
 11 Q. Okay. Was that training that you got when you
 12 first started driving for PTI?
 13 A. Yes.
 14 Q. Did that --
 15 A. Both times.
 16 Q. Both times. Did that cover issues like
 17 strokes?
 18 A. I don't recollect. I doubt it.
 19 Q. How did you receive that training?
 20 A. In a classroom at the same building as the
 21 Altoona Police are, and they're all PTI drivers
 22 being given the same training.
 23 Q. Was it like a classroom with an instructor at
 24 --
 25 A. Yes.

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1 Q. -- the front --
 2 A. Yes.
 3 Q. -- teaching a class?
 4 A. One of the managers.
 5 Q. Were there any paper materials that were
 6 provided to people who were taking the class?
 7 A. I believe so.
 8 Q. Do you still have a copy of that?
 9 A. Probably not. Actually, they -- they were --
 10 I'm not sure if part of the drivers' or
 11 employees' handbook at the back where you
 12 filled out stuff, questions. But besides that,
 13 I don't remember.
 14 Q. Was there a test of any kind at the end of this
 15 class?
 16 A. Yes, there are multiple questions that you had
 17 to answer for sure.
 18 Q. To sort of make sure that you were tracking the
 19 information?
 20 A. Yes.
 21 Q. And do you know whether that test was scored or
 22 pass/fail?
 23 A. I don't remember. I -- I don't think any of us
 24 had any trouble because most of these questions
 25 are common sense.

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1 Q. Sure. Was there at any -- any point when you
 2 were in contact with Mr. Tischer on
 3 August 12th, 2017, when you felt that he was in
 4 need of medical assistance?
 5 A. At the time I said to Marvin, Don't send him to
 6 Norma, he's stumbling around, he's not well, I
 7 hadn't come past that point.
 8 Q. Hadn't gone past the point of just saying,
 9 Don't send him back to Norma?
 10 A. Right.
 11 Q. Okay. Did that change at any point as you went
 12 on from there?
 13 A. Well, following his being sick arriving at the
 14 depot almost and then falling out of the van
 15 while I was inside the depot, he's now lying on
 16 the ground, and I'm not sure what's going on.
 17 Q. Sure. I take it that you did not call 911?
 18 A. No.
 19 Q. Did you know that 911 was being called for Mr.
 20 Tischer?
 21 A. No.
 22 Q. So when the police arrived, that was sort of
 23 your first understanding that someone had --
 24 had called for help?
 25 A. Well, what I understood was that Marvin had

12 (Pages 45 to 48)

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<p>1 called the family, and the wife was going to 2 come pick him up at the depot. 3 Q. How did you -- how did you develop that 4 understanding? 5 A. I don't know if Marvin or Neil or even Jake 6 told me. One of them told me that his wife is 7 coming to pick him up at the depot. 8 Q. And so that was the reason for going back to 9 the depot? 10 A. Correct. 11 Q. Did you at any point before you -- between 12 leaving the porta potty area on the east end of 13 the Altoona yard and getting -- when the police 14 arrived at the depot, did you at any point 15 think about calling 911? 16 A. No. To me that decision belongs to Marvin, the 17 manager. 18 Q. Okay. 19 A. I'm just a cab driver. 20 Q. Sure. I want to touch upon a couple things, 21 and we'll jump around in the chronology a 22 little bit. You mentioned you were doing some 23 driving of crews between the Altoona yard and 24 Norma. Where is Norma relative to Altoona? 25 A. About 15 minutes away in Chippewa Falls.</p>	<p>1 A. Yes. 2 Q. Okay. Other than the -- you know, so you've 3 talked about having some trouble with the seat 4 belt. Did you observe Mr. Tischer having any 5 other problems with either his hands or his -- 6 A. No. 7 Q. And you've also kind of described coming out of 8 the porta potty and stumbling. 9 A. No, that was the first time. 10 Q. Did you observe any other problems with his 11 arms or his legs? 12 A. No. 13 Q. Did you observe any problems with his speaking 14 ability? 15 A. No. 16 Q. Did you observe any problems with his facial 17 expression and muscles drooping? 18 A. No. 19 Q. When you were at Norma on August 12th, 2017, 20 did you observe Mr. Tischer making his 21 inspection of the railcars he was working on? 22 A. I was watching him. I was driving him from one 23 end to the other end. 24 Q. Was he making the inspection on foot, or was he 25 doing it --</p>
Page 50	Page 52
<p>1 Q. And is that east? West? North? South? 2 A. Northeast. 3 Q. Did you participate in -- or were you in a 4 position to watch any of the work that either 5 Mr. Franchuk or Mr. Tischer did when they were 6 in the Altoona yard before they left for Norma? 7 A. I don't remember. 8 Q. Okay. Because as we were kind of going through 9 it, you had a recollection of -- of seeing Mr. 10 Tischer in Norma, and I'm just wondering do you 11 have an early -- earlier recollection that day 12 of watching him work. 13 A. I cannot remember if I drove them to Norma to 14 the train or they took the train to Norma. 15 Q. Did you have, based on prior encounters with 16 Mr. Tischer, any way of comparing how he was 17 acting on August 12th, 2017, to how he'd acted 18 previously? 19 A. No. He showed no sign of any kind of ill 20 effects until we got to the east end in 21 Altoona. 22 Q. Okay. So the -- kind of the porta potty is 23 where you -- 24 A. It starts in my mind. 25 Q. It starts in your mind?</p>	<p>1 A. On foot. 2 Q. -- from the vehicle? 3 A. Yes. 4 Q. He was on foot? 5 A. Yes. 6 Q. And so when you were driving him, it was just 7 from point to point, and then -- 8 A. Right. 9 Q. -- he would get out -- 10 A. Right. 11 Q. -- and do his work? Do you know where Mr. -- 12 when you got back to Altoona after being at 13 Norma, do you know where Franchuk was as Mr. 14 Tischer is riding in your car? 15 A. He may have been in the engine that he's 16 responsible for, or he may have gotten out and 17 started talking with Marvin. I'm not sure. 18 Q. So you didn't have a chance to observe where he 19 was and what he was doing? 20 A. No. 21 Q. Okay. Did you have any conversation with 22 Mr. Franchuk after you got back to the Altoona 23 yard but before you waved your hands to 24 Mr. Marvin? 25 A. I believe the only thing that happened was that</p>

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1 he came to my cab and said we -- being asked to
 2 go back to Norma.
 3 Q. Okay. Did you ever communicate anything to
 4 Mr. Franchuk about Mr. Tischer having problems
 5 with his seat belt or anything else before you
 6 waved your hands at Mr. Marvin?
 7 A. I think he and I saw together Jake coming out
 8 of the port -- porta potty and stumbling, so he
 9 was aware about the same time I was. Keep in
 10 mind that from the west end of the train
 11 towards the east end of the train he had walked
 12 many cars and tested brakes and so on.
 13 Q. Mr. Tischer had?
 14 A. Yes.
 15 Q. Okay.
 16 A. At that point he didn't stumble.
 17 Q. Sure. And you were observing him?
 18 A. I saw him on and off, yes.
 19 Q. Did you ever hear anyone offer Mr. Tischer
 20 medical assistance?
 21 A. At what time?
 22 Q. Say before you -- from the time you saw Mr.
 23 Tischer come out of the porta potty until the
 24 time you took him to the depot, did you ever
 25 hear anyone offer medical assistance?

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1 A. No.
 2 Q. Have you ever heard anyone talk about how it
 3 was that 911 got called?
 4 A. No.
 5 Q. Do you know who called --
 6 A. No.
 7 Q. -- 911? Do you know when they called 911?
 8 A. Well, I assume that that would be after -- I
 9 don't know if they called -- think about it.
 10 Marvin says, Take him back to the depot, wife
 11 will come pick him up. So at this point I
 12 don't know if 911 has been called at all.
 13 Q. Sure. And I don't want you to speculate.
 14 A. I don't know.
 15 Q. I'm just asking for what knowledge you have as
 16 you sit here today. At any point was Mr.
 17 Tischer offered a bottle of water?
 18 A. Water?
 19 Q. Yeah.
 20 A. No.
 21 Q. To your recollection.
 22 A. My recollection. But the shanty, which is
 23 the -- within the yard, depot, had cases and
 24 cases of water, so you helped yourself if you
 25 needed some.

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1 Q. Is the shanty something different from the
 2 depot?
 3 A. Absolutely.
 4 Q. So what is -- the shanty is out --
 5 A. The shanty is a small room-size yard depot
 6 which is where they had a computer, lots of
 7 water stacked, and printed out stuff that they
 8 needed to print out.
 9 Q. Okay. Did you hear -- did you -- were you able
 10 to directly overhear any communication from
 11 Mr. Marvin to either Mr. Franchuk or Mr.
 12 Tischer about going back to Norma?
 13 A. I don't believe so.
 14 Q. So what you know about that is from -- coming
 15 from conversations between you and either
 16 Franchuk or Tischer?
 17 A. Correct.
 18 Q. Okay. You had mentioned that you have a -- a
 19 radio in this PTI vehicle that you're using.
 20 A. Rarely used because --
 21 Q. When you say "radio," are we talking about like
 22 a handheld walkie-talkie?
 23 A. Correct.
 24 Q. Or a CB radio that runs off --
 25 A. It's a built-in CD -- CB-type radio.

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1 Q. Type radio.
 2 A. Yep.
 3 Q. And who are -- when you use that radio, who are
 4 you communicating with?
 5 A. Usually I would use that only when they've
 6 asked me to go to an out-of-town yard and do --
 7 do something with the crew or the train that
 8 hasn't showed up. Then I would go on the radio
 9 and say, Hello, I'm here, when are you
 10 arriving.
 11 Q. And when you say, Hello, I'm here, who are you
 12 hoping to talk to?
 13 A. I'm the -- oh, to the engineer, usually.
 14 Q. Okay. So that's a communication --
 15 A. For the train that I'm meeting, yes.
 16 Q. That's a communication to the train crew?
 17 A. Right.
 18 Q. How about when you're using your phone, who are
 19 you using the phone to communicate with?
 20 A. PTI or their employees might call me for
 21 whatever reason.
 22 Q. And was that a personal phone or a corporate
 23 phone?
 24 A. Both.
 25 Q. Did you make any communications either by phone

14 (Pages 53 to 56)

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1 or by radio with respect to the Mr. Tischer
 2 incident?
 3 A. No.
 4 Q. Is there a -- in the PTI vehicle is there any
 5 capability -- any video recording capability?
 6 A. Well, if you exceed their expectations, you get
 7 to be on camera, which then lights up saying
 8 it's active and taking a photograph of whatever
 9 you're doing.
 10 Q. Okay.
 11 A. So if you hit a bump and it jars the vehicle,
 12 the camera might go off, in which case you go
 13 (indicating) because you don't know who's at
 14 the other end of the camera.
 15 Q. Sure. When you say the camera goes off, is
 16 there something that happens to tell you that
 17 the camera has gone off?
 18 A. It has a red LED light that says it's live.
 19 Q. Okay. Did the camera in the PTI vehicle at any
 20 point go live? Did it ever -- did the red LED
 21 light ever come on and say that --
 22 A. During this incident?
 23 Q. During this incident.
 24 A. No.
 25 Q. Okay. Other than what you've described, you

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1 know, giving a statement to Ms. Lukehart, did
 2 you have any involvement after August 12th,
 3 2017, in terms of investigation into what had
 4 happened here?
 5 A. If I understand the question -- could you
 6 repeat it, please?
 7 Q. Sure. I'm just trying -- you know, so you --
 8 you sort of described the timeline,
 9 August 12th, 2017, at the end of your shift
 10 after Mr. Tischer had been loaded into an
 11 ambulance and taken away. You eventually
 12 signed out and went home?
 13 A. Right.
 14 Q. Then after that, other than what you've told us
 15 about with Ms. Lukehart and giving a statement,
 16 did you have any involvement into any
 17 investigation about what had gone on with Mr.
 18 Tischer?
 19 A. No official investigation that I'm aware of
 20 other than asking Neil, How is Charlie -- how
 21 is Jake.
 22 Q. Sure. And when was it -- so do you recall when
 23 it was that you next ran into Mr. Franchuk
 24 after August 12th, 2017?
 25 A. It may have been weeks.

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1 Q. Okay. That was the first that you'd heard?
 2 A. Well, from other employees. I think UP
 3 employees may have told me first that he got
 4 helicoptered to Mayo in Rochester, and they did
 5 a brain surgery on him, and he died soon after.
 6 Q. But when you talked with Mr. Franchuk, that was
 7 the first person who was confirming that for
 8 you, or you already knew that?
 9 A. I don't know if he -- I think I already knew
 10 that from UP employees, yes.
 11 Q. Do you know Josh Tischer?
 12 A. Don't think so.
 13 Q. Okay. Do you know who Mike Swetnik is?
 14 A. Mike?
 15 Q. Swetnik, S-W -- or I'm sorry. Swentik,
 16 S-W-E-N-T-I-K.
 17 A. Don't believe so.
 18 Q. Do you know John Thomas, T-H-O-M-A-S?
 19 A. Only from verses.
 20 Q. Okay. How about Harold Lowe, L-O-W-E?
 21 A. I don't think so.
 22 Q. How about Erik Erickson, E-R-I-C-K-S-O-N?
 23 A. Well, I know many Ericksens, so I'm not sure.
 24 Was he a UP employee?
 25 Q. A UP employee.

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1 A. So I -- I was familiar with a lot of the UP
 2 employees because I spent hours with them
 3 daily, but from one day to the next, it could
 4 be totally different crew.
 5 Q. Sure.
 6 A. Or even from hour to hour.
 7 Q. So I take it the name Erik Erickson doesn't
 8 stand out as a --
 9 A. No.
 10 Q. -- particular UP employee to you?
 11 A. (Indicating.)
 12 Q. How about Tim Dold, D-O-L-D?
 13 A. (Indicating.)
 14 Q. Did you ever fill out --
 15 A. Most of the UP employees that I would be
 16 friends with and talking with sitting in my
 17 van, I never knew their surnames, first of all.
 18 Q. Sure. Because you just didn't -- you didn't
 19 need to.
 20 A. Well, because they were temporary
 21 acquaintances.
 22 Q. Sure. Did you ever make any report to PTI that
 23 this incident had occurred?
 24 A. I'm sure I have.
 25 Q. Do you know how you would have done that?

15 (Pages 57 to 60)

Page 61	Page 63
<p>1 A. Our local manager, Jeff somebody -- very hard 2 to get ahold of -- I reported to. 3 Q. And was that a phone call, or was that -- 4 A. It would be a phone call. 5 Q. Did you ever make any document to record -- 6 A. Not related to the incident. 7 Q. Okay. And PTI never asked you to do that? 8 A. No. 9 Q. Did -- well, so let me -- August 12th, 2017, 10 how much longer did you drive for PTI? 11 A. I think I was usurped by Medical Logistics 12 Systems, who was being run at the time by a -- 13 locally by an ex-PTI colleague. 14 Q. So is that a -- is that another driving 15 company? 16 A. Yes. 17 Q. And so at some point after August 12th, 2017, 18 they started to drive UP employees instead of 19 PTI? 20 A. No, nothing like that. 21 Q. Okay. 22 A. They had nothing to do with UP. It's just that 23 Medical Logistics, Network Global Systems, 24 another name for them, had a local manager 25 called -- supervisor called Donna such and</p>	<p>1 Q. Showing you what's been marked for 2 identification as Exhibit 1. Let me just first 3 ask you, do you recognize this document? 4 A. Yes. 5 Q. What do you recognize it as being? 6 A. The majority of my statement, but somewhat 7 added to. 8 Q. Okay. On the second page of Exhibit 1 do you 9 see the handwriting there? 10 A. Yes. 11 Q. Is that your signature? 12 A. Yes. 13 Q. And it's dated September 6th, 2017? 14 A. Yes. 15 Q. Is that when you signed this document? 16 A. Don't remember. 17 Q. Okay. Do you have any reason to -- to believe 18 you didn't sign it on that date? 19 A. No. 20 Q. Okay. And I want to understand what you're 21 saying. So when you say this is the majority 22 of my statement but somewhat added to it -- 23 A. Yes. 24 Q. -- what do you mean by that? 25 A. Well, for example, the last paragraph, beefy</p>
Page 62	Page 64
<p>1 such, who was an ex-PTI employee. 2 Q. So I -- so after this incident, August 12th, 3 2017, did you go to work for MLS? 4 A. Yes. 5 Q. I see. So you changed employer, basically? 6 A. Right. 7 Q. And do you recall when it was relative to 8 August 12th, 2017, that that happened? 9 A. Well, at least a month later. 10 Q. Okay. 11 A. Maybe more. I'm not sure. 12 Q. And are you currently working for MLS? 13 A. No. 14 Q. Or how long did that go on? 15 A. Until my cancer took me off the road. 16 Q. Okay. And has that been the case ever since 17 you stopped working for MLS? 18 A. Yes. 19 MR. BANKER: Okay. How are you doing? 20 I'm about to shift gears, and I've got some 21 documents to show you. 22 THE WITNESS: Go for it. 23 MR. BANKER: Okay. 24 (Exhibit 1 marked for identification.) 25 BY MR. BANKER:</p>	<p>1 one, says, To me, Jake needed -- 2 MR. COHEN: I'm going to -- hold on a 3 second. I'm going to make a running objection 4 to this document on the basis of foundation and 5 hearsay. Go ahead. 6 BY MR. BANKER: 7 Q. Yeah. Go ahead. 8 A. Jake needed medical treatment early on to me. 9 This -- this is not my words. 10 Q. Okay. So whose words -- 11 A. This -- I don't know. Whoever typed this up. 12 Q. Okay. So maybe the way to -- to approach this 13 is take them -- take as long as you need to 14 read this. I'd like to ask you some questions 15 about it after you've had a chance to review 16 it. 17 A. (Complying.) 18 MR. HAYDEN: Can we go off the record? 19 MR. BANKER: Sure. 20 VIDEOGRAPHER: Off record. The time is 21 2:28. 22 (A break was taken.) 23 (Exhibit 2 marked for identification.) 24 VIDEOGRAPHER: We're back on the record. 25 The time is 2:34.</p>

16 (Pages 61 to 64)

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1 BY MR. BANKER:
 2 Q. Okay. Mr. Lux, have you had a chance to review
 3 Exhibit --
 4 A. Yes.
 5 Q. -- 1? First question, in reviewing Exhibit 1
 6 is there anything that you feel is incorrect in
 7 that statement?
 8 A. There is nothing I feel that is incorrect other
 9 than what I underlined as not my words added.
 10 Q. Okay. Have you made markings on Exhibit 1 --
 11 A. Yes.
 12 Q. -- to indicate that certain things that are not
 13 --
 14 A. Yes.
 15 Q. -- your words? Okay. Let me come at it from a
 16 different direction. Having reviewed Exhibit
 17 1, has it -- that done anything to refresh your
 18 recollection about the incident that adds
 19 anything to what we've already --
 20 A. It says --
 21 Q. -- talked about?
 22 A. It says I remember except, you know, the
 23 additional statement that I felt that he
 24 needed. That wasn't the case.
 25 Q. And you're talking about the last paragraph on

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1 Page 2?
 2 A. Well, for example, the last paragraph, but 1 --
 3 on Page 1, third sentence up -- actually, about
 4 five sentences up, Jake needs medical
 5 attention. I had no idea what was wrong at the
 6 time.
 7 Q. Okay.
 8 A. Jake just sat around waiting for a decision
 9 from the trainmaster. I thought a clear sign
 10 of a stroke. I did no such thing.
 11 Q. Okay. Anything -- where else have you made
 12 marks on this document? Why don't we just talk
 13 about those.
 14 A. Well, the use of the word "eventually" here and
 15 there to me were a case of one to five minutes
 16 max.
 17 Q. Okay. And to come back to the -- to the
 18 question I wanted to be clear on. Has this --
 19 reading this done anything to refresh your
 20 memory on any of the details of the incident?
 21 A. I don't need refreshing other than the times,
 22 which I was not paying attention to. That's
 23 why I'm uncertain.
 24 Q. Okay. Let me show you what's been marked for
 25 identification as Exhibit 2. Do you recognize

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1 this document?
 2 A. Yes.
 3 MR. COHEN: At this point I just want to
 4 make a running objection to the use of this
 5 document or questioning regarding this document
 6 on the basis of hearsay. Go ahead.
 7 BY MR. BANKER:
 8 Q. What do you recognize this document to be?
 9 A. I think this is what Jamie and I in the UP
 10 Altoona office created.
 11 THE WITNESS: Is that true?
 12 MR. BANKER: Well, you can't -- actually,
 13 the way this works is you can't actually ask
 14 her questions even though she's right here. It
 15 has to be based on what you --
 16 THE WITNESS: Well, that's my
 17 understanding. Okay.
 18 BY MR. BANKER:
 19 Q. Okay. So if you'd like -- and you can take as
 20 long as you need -- we can go off the record
 21 while you do it. Would you like a chance to
 22 review this statement before I ask you
 23 questions?
 24 A. Not really.
 25 Q. Okay. Have you had a chance to review this

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1 recently?
 2 A. I think this morning with Mike.
 3 Q. Okay. When you reviewed it this morning, was
 4 there anything in this Exhibit 2 statement that
 5 you felt was incorrect?
 6 A. No.
 7 Q. And when you read it this morning, did it do
 8 anything to refresh your recollection about
 9 details about this incident beyond what we've
 10 already talked about?
 11 MR. COHEN: I just want to object. It's
 12 not an improper -- not a proper re --
 13 refreshment of recollection. Go ahead.
 14 A. So do I have a question outstanding?
 15 BY MR. BANKER:
 16 Q. Yes. Did it -- did it do any -- did reviewing
 17 this this morning do anything to refresh your
 18 recollection?
 19 A. Yes.
 20 Q. Okay. And what did it -- what part of your
 21 recollection did it refresh?
 22 A. (Reading document.) Okay.
 23 Q. Okay. I think what -- what I -- the question
 24 that I had asked was what, if any, part of your
 25 recollect -- did -- did reading that refresh

17 (Pages 65 to 68)

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1 any part of your recollection?
2 A. It just confirmed my recollection.
3 Q. Okay. Showing you what's been marked --
4 MR. BANKER: Or actually we haven't done
5 it yet.
6 (Exhibit 3 marked for identification.)
7 BY MR. BANKER:
8 Q. Showing you what's been marked for
9 identification as Exhibit 3. Have you seen
10 this document before?
11 A. No, I haven't.
12 Q. Okay. I'll represent to you that it was a
13 document produced in this lawsuit by Union
14 Pacific in response to written requests. I
15 interpret it to be GPS data regarding a PTI
16 vehicle. But I take it you don't understand it
17 to be that?
18 A. I assume that's what it is.
19 Q. Do you -- there's a -- there's a -- on Page 1
20 of Exhibit 3 there's a Mobile Device where it
21 says 419-C15381. Do you see that?
22 A. Yes.
23 Q. Do you know what the -- what, if any,
24 designation the GPS device in the PTI vehicle
25 had?

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1 A. No.
2 Q. Was there another PTI vehicle that was in close
3 proximity to you on August 12th, 2017, that was
4 driving alongside you?
5 A. Not driving alongside me, no, but --
6 Q. Okay.
7 A. -- we may have passed each other.
8 Q. So I want you to assume for these questions
9 that this is some sort of report about the
10 movement of the PTI vehicle that --
11 A. Okay.
12 Q. -- that you were driving and ask some questions
13 based on that assumption. You had said, I
14 believe, that you thought you started work at
15 about 6 o'clock in the morning on August 12th,
16 2017.
17 A. Right.
18 Q. And if you go to Page 4 of Exhibit 3, between
19 the fourth row and the fifth row this vehicle
20 that is reporting data here appears to be
21 parked for 9 hours and 37 minutes, from 5:30 in
22 the morning until 3 o'clock in the afternoon in
23 Altoona.
24 A. Okay.
25 Q. Do you know whether you had operated more than

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1 one PTI vehicle on August 12th, 2017?
2 A. No recollection. Very rarely did you switch
3 vans for any other reason than a flat tire or
4 your -- I don't know.
5 Q. So your practice was to be assigned a vehicle
6 for a shift and --
7 A. Yes.
8 Q. -- continue driving it --
9 A. Yes.
10 Q. -- throughout the day? Do you recall whether
11 there was -- that you didn't do any driving
12 that day, August 12th, 2017, until 3 o'clock in
13 the afternoon?
14 A. No, I don't. See --
15 Q. Would that have ever happened while you were
16 working for PTI?
17 A. As a yard van you would sit next to a train and
18 wait for the crew to ask you to take them
19 somewhere else.
20 Q. Sure.
21 A. So I could be nine hours of sitting there. So
22 I read a lot of good books.
23 Q. Okay. So that's -- that's a possible --
24 A. It is possible, yes.
25 Q. But you don't have a specific recollection --

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1 A. No.
2 Q. -- sitting here today? If we look at that
3 entry that is one, two, three, four -- the
4 fifth row, it looks like that at 3:07 p.m. this
5 vehicle was in Altoona, Wisconsin.
6 A. Right.
7 Q. And then if you -- if you read down, the
8 vehicle begins to move after 3:07 p.m. through
9 the end of Page 4 going on to Page 5 all the
10 way down to the third row of the bottom of Page
11 5 of Exhibit 3. And the two entries that I
12 want to kind of have you hold in mind is the
13 entry at 3:07 p.m. where it starts in Altoona
14 and then it is making its way through Eau
15 Claire into Chippewa until it comes at
16 6:48 p.m. to a landmark in Norma.
17 A. Is there a question?
18 Q. Yeah. Are you -- are you following what --
19 what I'm --
20 A. I accept what I see. I don't remember the
21 times.
22 Q. Sure. Seeing that this vehicle is reporting
23 data of being in Norma at 6:48 p.m., does that
24 do anything to refresh your recollection as to
25 the timelines that we talked --

18 (Pages 69 to 72)

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<p>1 A. No.</p> <p>2 Q. -- about earlier? Okay. Would you have any</p> <p>3 reason to disagree with a GPS report from the</p> <p>4 PTI vehicle?</p> <p>5 A. No, I'll take it as it says.</p> <p>6 Q. Okay. And then if we continue on through the</p> <p>7 bottom of Page 5 going on to Page 6, you can</p> <p>8 see that the vehicle is moving from Norma back</p> <p>9 into Eau Claire, and it reaches a landmark in</p> <p>10 Altoona at 7:15 p.m.</p> <p>11 A. Okay.</p> <p>12 Q. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Does that do anything to refresh your</p> <p>15 recollection as to the time?</p> <p>16 A. I accept the times. I just...</p> <p>17 Q. Okay. And then if we go on to Page 7, and the</p> <p>18 last entry there shows the vehicle in Altoona</p> <p>19 at 8:53 p.m. where it's then parked for three</p> <p>20 hours and six minutes. Do you see that?</p> <p>21 A. Um-hum.</p> <p>22 Q. Does that do anything to refresh your</p> <p>23 recollection of the timeline?</p> <p>24 A. What it's helping me recollect is that the time</p> <p>25 of day was a lot later than what I thought --</p>	<p>1 all, what are we -- what are we looking at</p> <p>2 here?</p> <p>3 A. These are the tracks through the Altoona yard</p> <p>4 in Altoona.</p> <p>5 Q. Okay. Have you ever seen a document like this</p> <p>6 before?</p> <p>7 A. Oh, yes.</p> <p>8 Q. When you say "very out-of-date" --</p> <p>9 A. Well, I might be wrong too. I may be jumping</p> <p>10 the gun because I see the -- the new tracks</p> <p>11 also, but I thought there were more new tracks</p> <p>12 than this is showing.</p> <p>13 Q. Okay. What I -- and this maybe isn't the best</p> <p>14 document to do it, but I wanted to sort of ask</p> <p>15 you are you able to use this Exhibit 4 to</p> <p>16 orient us to when you mentioned the east end</p> <p>17 and the west end of the yard?</p> <p>18 A. Absolutely.</p> <p>19 Q. Okay.</p> <p>20 A. Except the distances shown are not real.</p> <p>21 Q. Okay. So this isn't necessarily to scale.</p> <p>22 A. Not to scale, no.</p> <p>23 Q. But -- so using Exhibit 4 when you mentioned</p> <p>24 that the train had come back from Norma into</p> <p>25 Altoona --</p>
Page 74	Page 76
<p>1 remembered.</p> <p>2 Q. Sure.</p> <p>3 A. But I -- it also brings back to my mind that</p> <p>4 when I got home probably around 9, after 9</p> <p>5 p.m., that I thought, Hey, that's -- that's a</p> <p>6 long day.</p> <p>7 Q. Sure. Because you had started at 6 o'clock in</p> <p>8 the morning?</p> <p>9 A. Right.</p> <p>10 Q. How long did your shifts usually last?</p> <p>11 A. Eight hours.</p> <p>12 Q. Eight hours. So --</p> <p>13 A. On the weekends they may have been 12, or some</p> <p>14 of the day shift may have been 12 hours.</p> <p>15 Q. Okay. So a 12-hour day was -- was within the</p> <p>16 realm of possibility?</p> <p>17 A. Yes.</p> <p>18 (Exhibit 4 marked for identification.)</p> <p>19 BY MR. BANKER:</p> <p>20 Q. Showing you what's been marked for</p> <p>21 identification as Exhibit 4.</p> <p>22 A. Very out-of-date.</p> <p>23 Q. So --</p> <p>24 A. Out-of-date.</p> <p>25 Q. Out-of-date. Okay. What -- well, first of</p>	<p>1 A. Right.</p> <p>2 Q. -- where -- where would you have been on this</p> <p>3 Exhibit 4 track chart?</p> <p>4 A. Probably Track 2 at the west end.</p> <p>5 Q. Okay.</p> <p>6 A. Mile Marker 90.</p> <p>7 Q. And could you make a mark of some sort.</p> <p>8 Let's -- let's use a 1 with a circle around it</p> <p>9 --</p> <p>10 A. Okay.</p> <p>11 Q. -- to represent the point you were at when the</p> <p>12 train came back from Norma to Altoona.</p> <p>13 A. Okay. (Indicating.)</p> <p>14 Q. And then when you said you had to go to the</p> <p>15 west end of the --</p> <p>16 A. East end.</p> <p>17 Q. -- yard --</p> <p>18 A. This is the west end (indicating).</p> <p>19 Q. I'm sorry. I got that --</p> <p>20 A. Okay.</p> <p>21 Q. That's -- that's -- that's the confusing part.</p> <p>22 So we're starting on the west end coming back</p> <p>23 from Norma to Altoona.</p> <p>24 A. Um-hum.</p> <p>25 Q. That's what you've marked as 1, that's where</p>

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<p>1 you first --</p> <p>2 A. Yes.</p> <p>3 Q. -- were with the van? Then you moved to the</p> <p>4 west end of the yard. Are you able to make a</p> <p>5 mark on Exhibit 4 to indicate generally where</p> <p>6 you were when you went to the west end of the</p> <p>7 yard?</p> <p>8 A. We're coming from the west end.</p> <p>9 Q. I'm sorry. I did it again.</p> <p>10 A. That's all right.</p> <p>11 Q. On the east end of the yard.</p> <p>12 A. The other left.</p> <p>13 Q. Yes, the other left.</p> <p>14 A. I -- when I used to teach -- just a quick</p> <p>15 giggle -- I would say on Page 41 at top left on</p> <p>16 corner you'll see such and such a signal, and</p> <p>17 everybody is over on the right-hand side. I'd</p> <p>18 say, The other left. Okay. So you're asking</p> <p>19 me where the depot and the shanty are. You can</p> <p>20 see the depot --</p> <p>21 Q. Yeah.</p> <p>22 A. -- kind of in the bottom of the -- center of</p> <p>23 the bottom.</p> <p>24 Q. Yes.</p> <p>25 A. The shanty would be -- I would put it up</p>	<p>1 A. Public roads for at least a half a mile, then</p> <p>2 cross the train tracks on the bridge, and then</p> <p>3 come back on the south side of the tracks --</p> <p>4 Q. Okay.</p> <p>5 A. -- to the depot.</p> <p>6 Q. And none of the public roads are reflected;</p> <p>7 this is just a track --</p> <p>8 A. No.</p> <p>9 Q. -- chart; it doesn't show the roads?</p> <p>10 A. Yeah.</p> <p>11 Q. But as to the location, just for orientation</p> <p>12 purposes, the depot, the third place that you</p> <p>13 went to, could you mark that with a 3 and</p> <p>14 circle it.</p> <p>15 A. (Indicating.)</p> <p>16 MR. BANKER: Okay.</p> <p>17 THE WITNESS: Gadzooks. See what happens</p> <p>18 when you get fat?</p> <p>19 MR. BANKER: Why don't we just take, like,</p> <p>20 a quick five-minute break. I want to review my</p> <p>21 notes, make sure I don't have any other</p> <p>22 questions.</p> <p>23 THE WITNESS: Sure.</p> <p>24 MR. BANKER: And then I will wrap up.</p> <p>25 VIDEOGRAPHER: This marks the end of Media</p>
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<p>1 around -- I would put it up around 12.</p> <p>2 Q. Okay.</p> <p>3 A. From the east end.</p> <p>4 Q. So why don't you mark that with a 2 and a</p> <p>5 circle.</p> <p>6 A. (Indicating.) I just did.</p> <p>7 Q. Okay.</p> <p>8 A. That's a guess, by the way.</p> <p>9 Q. Sure. And then the third place that you</p> <p>10 mentioned was when you went to the depot after</p> <p>11 you were at the shanty.</p> <p>12 A. Right.</p> <p>13 Q. And am I right that the porta potty is at the</p> <p>14 shanty?</p> <p>15 A. Yes.</p> <p>16 Q. So the third place you went was the depot?</p> <p>17 A. Right.</p> <p>18 Q. And you mentioned that being on this document.</p> <p>19 Could you just mark that with a 3 and a circle.</p> <p>20 A. Well, it's not on this document.</p> <p>21 Q. The depot?</p> <p>22 A. Well, yeah, this -- this is the depot</p> <p>23 (indicating). Excuse me. So what you had to</p> <p>24 do was go outside the yard.</p> <p>25 Q. Okay.</p>	<p>1 No. 1 in the deposition of Chaz Lux. We are</p> <p>2 off the record at 3:01.</p> <p>3 (A break was taken.)</p> <p>4 VIDEOGRAPHER: This is the beginning of</p> <p>5 Media No. 2 in the deposition of Chaz Lux. We</p> <p>6 are back on the record at 3:08.</p> <p>7 BY MR. BANKER:</p> <p>8 Q. So I just -- one last question, I guess. You</p> <p>9 know, looking back on this incident of</p> <p>10 August 12th, 2017, is there anything that you</p> <p>11 wish you had done differently that day?</p> <p>12 A. No.</p> <p>13 MR. BANKER: Okay. I don't have any</p> <p>14 further questions at this time.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MR. HAYDEN: Want me to go?</p> <p>17 MR. COHEN: (Indicating.)</p> <p>18 MR. HAYDEN: Okay.</p> <p>19 BY MR. HAYDEN:</p> <p>20 Q. Sir, I'm Tom Hayden. I represent the Union</p> <p>21 Pacific Railroad in this lawsuit. I have some</p> <p>22 questions for you. Let's look at Exhibit 3,</p> <p>23 the GPS data --</p> <p>24 A. Um-hum.</p> <p>25 Q. -- if you -- if you could. You know what?</p>

<p style="text-align: right;">Page 81</p> <p>1 Before that, there's a couple things that I 2 wrote down that I wasn't clear of just about 3 general stuff as you went through before I get 4 into those documents. Very early on you said 5 that in preparation for the case you gave 6 statements, and you mentioned Jamie Lukehart 7 here, who is with us, and Charlie Schulz. And 8 I think I heard you say you gave two statements 9 to Mr. Schulz and then to Ms. Lukehart Hobbs. 10 A. Right. 11 Q. Can you tell us -- and we've talked about one 12 of the statements you gave to Mr. Schulz, the 13 handwritten one that's Exhibit 1; is that 14 correct? 15 A. Um-hum. 16 Q. By the way, you didn't type that up; right? 17 A. No. 18 Q. Mr. Schulz did? 19 A. I assume so. 20 Q. Presumably. When did that take place that 21 you -- well, we have the date of it that you 22 signed it, but is that the date that the 23 document was prepared, if you know? 24 A. It's one of the two meetings that took place at 25 Perkins over a cup of coffee and...</p>	<p style="text-align: right;">Page 83</p> <p>1 occur? 2 A. Now you're asking. 3 Q. Couple of days? Weeks? 4 A. I think maybe one to four weeks between him 5 giving this back. 6 Q. Okay. When you -- where did you meet 7 Mr. Schulz the first time? 8 A. At Perkins. 9 Q. And the second time? 10 A. Perkins. 11 Q. Okay. And the first time that you met 12 Mr. Schulz, was that recorded, the -- 13 A. Not as far as I know. I -- not as far as I 14 remember. 15 Q. Was there -- 16 A. Neither of them were recorded. 17 Q. Was there anybody else with you when you met 18 with Mr. Schulz at Perkins the first time? 19 A. I don't believe on the first time. My wife 20 came with me one of those two meetings. 21 Q. Can't remember which one it was? 22 A. No. 23 Q. Was there ever anyone other than Mr. Schulz, 24 your wife, and yourself sitting down at Perkins 25 discussing the events at issue here?</p>
<p style="text-align: right;">Page 82</p> <p>1 Q. Perkins, the fine dining establishment here -- 2 A. Right. 3 Q. -- in town? Okay. 4 A. Yes. 5 Q. So let's -- let's look at Exhibit 1 then again 6 just to get the dates so we're clear -- we're 7 both clear. This is signed by you on 8 September 6th of 2017? 9 A. Yep. 10 Q. Is what happened that you met Mr. Schulz maybe 11 some days before that and -- 12 A. It would have to be. 13 Q. -- and then he came back and met you again with 14 this -- 15 A. Right. 16 Q. -- handwritten -- 17 A. Right. 18 Q. -- document that you then signed? 19 A. Yes. 20 Q. Is that -- I don't want to put words in your 21 mouth. Is that -- 22 A. Yes. 23 Q. -- how that happened? 24 A. That's how I remember it, yes. 25 Q. When did the first meeting with Mr. Schulz</p>	<p style="text-align: right;">Page 84</p> <p>1 A. I'm trying to think if we met Neil there at a 2 different time or he was present on the first 3 meeting. I think he may have been present on 4 the first meeting. 5 Q. By Neil you mean Neil Franchuk? 6 A. Yes. 7 Q. So your best recollection here today is that 8 you -- that Mr. Franchuk and Mr. Schulz met you 9 at the Perkins? 10 A. Right. I think so. That was the case, yeah. 11 Q. And how did you -- how did you know to meet at 12 the Perkins? How were the arrangements made? 13 A. Well, they asked where -- where I preferred, 14 and I said, Well, Perkins is a nice, good cup 15 of coffee. 16 Q. At a good price. 17 A. At a good price? No, not-so-good price. 18 Q. Did somebody reach out to you by phone? 19 A. Yes. 20 Q. Who did -- who did that? 21 A. Charlie. 22 Q. Had you known Charlie Schulz before -- 23 A. No. 24 Q. -- he called you? And he introduced himself as 25 somebody working for Mr. LeNeave's law firm?</p>

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1 A. I believe so.
 2 Q. Okay. And did you talk to Neil Franchuk before
 3 you sat down with him --
 4 A. No.
 5 Q. -- and Mr. Schulz? And is there anybody else
 6 now who you can recall being with you when you
 7 sat with those two --
 8 A. Absolutely not.
 9 Q. -- fellows? Was anything written down? Any
 10 notes taken by you or Mr. Franchuk or Mr.
 11 Schulz?
 12 A. I know I and Neil did not. I think Charlie
 13 took a lot of notes.
 14 Q. Did you bring any documents or materials or
 15 information to the meeting?
 16 A. No.
 17 Q. Did Mr. Franchuk bring anything to the meeting?
 18 A. No.
 19 Q. Did you understand the purposes of that meeting
 20 to be ultimately a statement being prepared on
 21 your behalf?
 22 A. I don't think that was emphasized. I think it
 23 was simply put your heads together and come up
 24 with the -- a story.
 25 Q. A story. Okay. Did you say a good story? A

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1 story?
 2 A. The story.
 3 Q. Okay. And so you relied in part on
 4 Mr. Franchuk's recollection in sharing with
 5 Mr. Schulz the events as you --
 6 A. I believe I asked Neil to confirm my statement,
 7 you know, to the question.
 8 Q. So would you -- would you view this sort of as
 9 a group effort between you, Mr. Franchuk, and
 10 Mr. Schulz to come up with the story?
 11 A. (Indicating.)
 12 Q. Is that correct?
 13 A. Recollect the incident, yes.
 14 Q. Okay. And then after -- how -- about how long
 15 did you guys spend together?
 16 A. About a half to one hour.
 17 Q. After that, did you -- did you then -- were you
 18 then --
 19 A. We went our separate ways.
 20 Q. You went your separate ways. All three of you?
 21 A. Um-hum.
 22 Q. When did you next hear from anybody, either
 23 Neil or Mr. Schulz?
 24 A. I didn't hear from Neil. I think I bumped into
 25 Neil once.

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1 Q. Whereabouts?
 2 A. In the yard as I was working.
 3 Q. Okay. Did you speak to -- to Mr. Franchuk?
 4 A. Well, I asked him to confirm what I heard about
 5 the UP guys telling me that Jake had died.
 6 Q. And he did confirm that?
 7 A. Yes.
 8 Q. And did -- do you recall any other
 9 conversation -- or any other parts of that
 10 conversation with Mr. Franchuk?
 11 A. Not really.
 12 Q. And then when did you next talk to Mr. Franchuk
 13 after that chance meeting in the yard?
 14 A. Didn't.
 15 Q. Did you ride with Mr. Franchuk that day or just
 16 saw him in the yard?
 17 A. He's part of the crew. He's the engineer that
 18 moved the train on which Jake was working.
 19 Q. I -- oh, yes. I'm sorry. I -- I -- I -- I
 20 understood that. But the day that you ran into
 21 him after the first Perkins meeting, was he --
 22 were you driving him anywhere or you just --
 23 A. No, I don't think so. No.
 24 Q. I understand. How about -- when did you next
 25 see him again, Mr. --

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1 A. I don't believe I did.
 2 Q. And then Mr. Schulz, when was your next
 3 communication with him?
 4 A. Well, af -- he called again saying, I have the
 5 written-up document, I want you to confirm and
 6 sign.
 7 Q. Okay. And -- and then you made arrangements to
 8 meet him at the same Perkins?
 9 A. Yes.
 10 Q. And was Mr. Franchuk there that second time?
 11 A. No.
 12 Q. How long was that second meeting with
 13 Mr. Schulz?
 14 A. Again, between a half to one hour.
 15 Q. And at any time prior to -- well, really at any
 16 time prior to today, have you spoken with
 17 lawyers at the law firm Mr. Schulz works?
 18 A. He called me Monday or Tuesday. I don't know
 19 what day it is today.
 20 Q. Of this --
 21 A. Thursday?
 22 Q. Of this week?
 23 A. Yeah.
 24 Q. Okay.
 25 A. Thirsty --

22 (Pages 85 to 88)

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1 (Cross-talk.)
2 A. Thirsty Thursdays. Okay. So he called saying
3 that the -- this would take place at my house,
4 and I asked how many people, and I said, No, my
5 wife is not well, and so he rearranged this
6 location.
7 BY MR. HAYDEN:
8 Q. Okay. And was it just Mr. Schulz you talked to
9 or anyone else?
10 A. No, that's it.
11 Q. Have you talked to anyone else at the firm that
12 Mr. Schulz works at?
13 A. No.
14 Q. Okay. So you sat down at Perkins, and
15 Mr. Schulz showed you what's -- we -- now been
16 marked as Exhibit 1. Is that the same --
17 A. Right.
18 Q. -- document he showed you?
19 A. Right.
20 Q. Did he show you a draft of this document, or
21 did he just show you as it appears now written
22 up?
23 A. There may have been a draft on the first
24 meeting. I'm not sure. But in what I had
25 signed, I've explained to Mike that the stuff

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1 that I have underlined are additions.
2 They're -- I don't remember them being my
3 words.
4 Q. Okay.
5 A. Because I -- I resent the implication that I
6 should have been medically aware that this is a
7 stroke. There's no way. I challenge anybody
8 without any medical training to come up with
9 that unless you are really familiar with stroke
10 symptoms.
11 Q. And so you feel like Mr. Schulz put those words
12 on this paper, and you were compelled to sign
13 it?
14 A. I wasn't compelled. I was con -- convinced.
15 Q. Okay. Explain that for us.
16 A. That's hard. I -- I'm a sucker. What can I
17 tell you?
18 Q. Because you knew when you saw it drafted up in
19 this typed form that there were things in there
20 that you disagreed with that weren't your
21 words?
22 A. That were not my words. They were kind of
23 overemphasizing what I was saying, and --
24 Q. Drawing --
25 A. -- I didn't think there was a need for that.

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1 Q. He was drawing conclusions that were not your
2 own; is that right?
3 A. Yeah. For example, that I thought was clear
4 signs of a stroke. Absolutely not. That's not
5 my words.
6 Q. Well, let's go -- let's go through it in more
7 detail. But before we do that, you say that
8 there was possibly a draft that was shown to
9 you the first meeting at Perkins. Is that your
10 recollection?
11 A. I believe so.
12 Q. Was it a typewritten draft like this?
13 A. No, it was handwritten --
14 Q. Handwritten?
15 A. -- I believe, yeah.
16 Q. Okay. And that was not in your handwriting;
17 right?
18 A. No.
19 Q. And you never provided any handwriting or any
20 written notes or written statement or anything
21 like that --
22 A. I don't believe so.
23 Q. -- to Mr. Schulz; is that correct?
24 A. Yes.
25 Q. Okay. All right. Let's take a look then at

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1 Exhibit 1. Let's look at the third paragraph
2 down where the paragraph starts, At Altoona,
3 the train stopped at the Kennedy Road Crossing.
4 Do you see that, sir?
5 A. Yes.
6 Q. Second sentence -- sentence goes on to say, The
7 train pulled into one of the yard tracks, and I
8 drove Jake to the rear of the train. Do you
9 see that, sir?
10 A. Right.
11 Q. And you testified about that already today;
12 right?
13 A. Yes.
14 Q. But the next thing that happened, according to
15 what you testified to earlier today, was that
16 Mr. Tischer then went on to work, and I think
17 you said did a lot of work there at that point
18 after you dropped him off.
19 A. A lot. Some work.
20 Q. Okay. He had walked the length of the train
21 from the east end to --
22 A. At least half the length of the train.
23 Q. From the west end -- starting on the west end
24 towards the east end?
25 A. Right.

23 (Pages 89 to 92)

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<p>1 Q. And if we look at Exhibit 3, sir, that's the</p> <p>2 GPS data. If you turn now to Page 6 of that</p> <p>3 document, as Mr. Banker went through with you</p> <p>4 at 7:15 this -- this document, the GPS data,</p> <p>5 says that you arrived back at that landmark</p> <p>6 Altoona and parked for six minutes. Do you see</p> <p>7 that?</p> <p>8 A. Yes.</p> <p>9 Q. Now, was that likely to be the -- that moment</p> <p>10 when you arrived back at Altoona on the west</p> <p>11 end of the yard?</p> <p>12 A. Yes.</p> <p>13 Q. And then the six minutes of parking would have</p> <p>14 been some initial work that Mr. Tischer</p> <p>15 performed as you waited for him?</p> <p>16 A. I would say so, yes.</p> <p>17 Q. And then at 7:29 there's a 16-minute time</p> <p>18 period during which you're parked, and that too</p> <p>19 would have been some additional work that Mr.</p> <p>20 Tischer was performing from the west end to the</p> <p>21 east --</p> <p>22 A. Yes.</p> <p>23 Q. -- end of that yard? Work that you observed</p> <p>24 him doing and --</p> <p>25 A. Yes.</p>	<p>1 when you were in your truck -- in your van</p> <p>2 observing Mr. Marvin, Mr. Tischer, and Mr.</p> <p>3 Franchuk having a conversation some 20 yards</p> <p>4 away from your van; is that -- is that fair?</p> <p>5 A. I have no proof, so I -- I'm not sure.</p> <p>6 Q. Okay. But that's -- that's the only -- if</p> <p>7 you -- if you look forward with me beyond the</p> <p>8 one-minute park -- parking time at 8:07, at</p> <p>9 8:15 there's a 20-minute parking time, at</p> <p>10 8:38 p.m. there's another one-minute stop, and</p> <p>11 then at 8:49 there's a -- another one-minute</p> <p>12 stop. Do you see all those, sir?</p> <p>13 A. Yes.</p> <p>14 Q. Culminating in the three-hour-and-six-minute</p> <p>15 parking commencing at 8:53 p.m.; is that -- is</p> <p>16 that --</p> <p>17 A. Yes.</p> <p>18 Q. -- true?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. So then if the one-minute stop at 8:07</p> <p>21 is part of the normal work that you described,</p> <p>22 you have no reason to doubt that it's at 8:15</p> <p>23 p.m. during those -- that 20-minute stop that</p> <p>24 the conversation you observed among Mr. Marvin,</p> <p>25 Mr. Franchuk, and Mr. Tischer occurs; correct?</p>
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<p>1 Q. -- and him --</p> <p>2 A. With no problems.</p> <p>3 Q. With no problems. And then 8 -- 8:07 you're</p> <p>4 parked -- 8:07 p.m. you're parked for one</p> <p>5 minute -- one minute, the time period. What</p> <p>6 would that have been, sir? Remember in the</p> <p>7 sequence?</p> <p>8 A. Typically when you're assisting sitting next to</p> <p>9 a train that is parked being tested or</p> <p>10 disassembled or assembled, whatever, you're</p> <p>11 just waiting for them to tell you what -- which</p> <p>12 end of the train to go to.</p> <p>13 Q. Sure. So that was just normal waiting time</p> <p>14 during --</p> <p>15 A. Sure.</p> <p>16 Q. -- Mr. Tischer performing his work?</p> <p>17 A. Right.</p> <p>18 Q. With no problems; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. And the next time you're parked is at 8:15, and</p> <p>21 this is for a 20-minute period of time. Do you</p> <p>22 see that one there, sir, on --</p> <p>23 A. Yes.</p> <p>24 Q. -- Page 6? And from what you testified to</p> <p>25 already today, that would be that time period</p>	<p>1 A. I guess so, yes.</p> <p>2 Q. Because it was longer than one minute?</p> <p>3 A. Right.</p> <p>4 Q. And so probably most likely it was in that</p> <p>5 20-minute period; correct?</p> <p>6 A. Right.</p> <p>7 Q. Okay. And that's also during the time that he</p> <p>8 was -- he, Mr. Tischer, was using the restroom</p> <p>9 would have been in that same period of time?</p> <p>10 A. Yes.</p> <p>11 Q. Or the porta potty, just so we're using the</p> <p>12 same language; is that correct?</p> <p>13 A. Um-hum.</p> <p>14 Q. Okay. So now back to Exhibit No. -- well, now</p> <p>15 while we're looking at this, let's just finish</p> <p>16 this thing. We can put this aside. So then at</p> <p>17 8:38 -- or at -- let's go back even further.</p> <p>18 At 8:35, following the 20-minute parking or</p> <p>19 parked period, you then recommence traveling</p> <p>20 between 8:35 and 8:38 p.m. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Then there's a one-minute stop. Do you see</p> <p>23 that?</p> <p>24 A. I think that's where I stopped next to the post</p> <p>25 office to let him finish his --</p>

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<p>1 Q. Vomit --</p> <p>2 A. -- vomiting, yeah.</p> <p>3 Q. Okay. And then that would mean -- that would</p> <p>4 put us back in the yard -- I'm sorry. That</p> <p>5 would put us at the depot, according to this</p> <p>6 document, at 8:49 p.m., is that correct, or is</p> <p>7 that --</p> <p>8 A. Well, that shows one minute again, so...</p> <p>9 Q. And that wouldn't be long enough for you to</p> <p>10 have parked at the depot; correct?</p> <p>11 A. I -- there -- so there's two one-minute --</p> <p>12 Q. Did Mr. --</p> <p>13 A. -- parks --</p> <p>14 Q. Dr. Mr. --</p> <p>15 A. -- 10 minutes apart.</p> <p>16 Q. Did you stop Mr. -- did you stop for Mr.</p> <p>17 Tischer to vomit twice?</p> <p>18 A. No.</p> <p>19 Q. Okay.</p> <p>20 A. So what I'm guessing is that the second one</p> <p>21 minute I had switched the van off having got</p> <p>22 back to the depot and then went and checked for</p> <p>23 people to help us in the depot.</p> <p>24 Q. But that would have taken longer than one</p> <p>25 minute or not because at 8:50 there shows</p>	<p>1 the depot's parking lot. So that --</p> <p>2 Q. Where it then rested or stayed?</p> <p>3 A. Well, I was done. I walked away. So I don't</p> <p>4 know if they had another driver taking it over</p> <p>5 or it sat for a while.</p> <p>6 Q. Let me be perfectly clear then or let us be</p> <p>7 perfectly clear. When you left the vehicle at</p> <p>8 the depot, where was it parked?</p> <p>9 A. As I said, either if there was another driver</p> <p>10 coming to take the -- take over the shift in</p> <p>11 the van, it would be just outside the depot's</p> <p>12 front door or 50 yards down in the parking lot.</p> <p>13 Q. Just can't remember?</p> <p>14 A. Can't remember.</p> <p>15 Q. And it was just outside the depot's front door</p> <p>16 where you testified earlier that Jake had</p> <p>17 fallen next to the vehicle, and you and Mr.</p> <p>18 Marvin were attempting to move him or to get</p> <p>19 him up?</p> <p>20 A. True. But then across the parking lot from</p> <p>21 the -- from the front door where Jake fell out</p> <p>22 is where I would switch or out of the van. You</p> <p>23 with me?</p> <p>24 Q. I am. So is it possible -- is it still</p> <p>25 possible that that one minute was you arriving</p>
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<p>1 movement again.</p> <p>2 A. True. I don't understand that.</p> <p>3 Q. So most -- most likely it wasn't until 8:53</p> <p>4 that you arrived and parked your car at the</p> <p>5 depot where you then, as it says there, powered</p> <p>6 off; is that correct?</p> <p>7 A. Yes, that seems logical. Although why there</p> <p>8 were two one-minute parking is -- is -- doesn't</p> <p>9 make sense.</p> <p>10 Q. But putting that aside, you know that your time</p> <p>11 at the depot was longer than one minute?</p> <p>12 A. Absolutely.</p> <p>13 Q. And your vehicle ended up staying there in its</p> <p>14 parked position at the depot after Mr. Tischer</p> <p>15 was attended to and after he was taken to the</p> <p>16 hospital from 8:53 onward for three hours and</p> <p>17 six minutes; is that correct?</p> <p>18 A. Um-hum.</p> <p>19 Q. Because you left -- you left the vehicle there?</p> <p>20 A. Yes.</p> <p>21 Q. When you -- when you finally arrived at the</p> <p>22 depot and then described to us --</p> <p>23 A. I would have had to move the -- the vehicle</p> <p>24 from outside the depot to either the parking</p> <p>25 spot outside the depot or just down the road in</p>	<p>1 at the depot's front door, you getting out,</p> <p>2 going in?</p> <p>3 A. I would have switched it off while I was going</p> <p>4 inside the office to make sure that he didn't</p> <p>5 do anything silly and, you know, I could get</p> <p>6 somebody to help.</p> <p>7 Q. And that's why -- because that 8:53 parking</p> <p>8 period includes the notation that the ILM was</p> <p>9 powered off, that means that it's most likely</p> <p>10 that at 8:53 is when you arrived at the depot's</p> <p>11 front door, turned it off, and went inside for</p> <p>12 help; is that correct?</p> <p>13 A. Possible.</p> <p>14 Q. Okay. But you have no reason to -- you have no</p> <p>15 other options on this printout of GPS data that</p> <p>16 makes sense other than that 8:53 p.m. time</p> <p>17 period?</p> <p>18 A. I -- I think so, yes.</p> <p>19 Q. That's consistent with what you would have</p> <p>20 done; you would have, quote/unquote, powered</p> <p>21 off, gone in to look for help, etc. --</p> <p>22 A. Right.</p> <p>23 Q. -- correct?</p> <p>24 A. Right.</p> <p>25 Q. Okay. So now let's go back to Exhibit No. 1,</p>

25 (Pages 97 to 100)

<p style="text-align: right;">Page 101</p> <p>1 the handwritten -- or I'm sorry -- the</p> <p>2 typewritten statement. The fourth paragraph,</p> <p>3 sir, begins, I was concerned because Jake had</p> <p>4 difficulty getting out of the seat belt and was</p> <p>5 limping. This was very unusual for Jake.</p> <p>6 You -- to the best of your recollection, you</p> <p>7 had only worked with him one other time prior</p> <p>8 to this day --</p> <p>9 A. Right.</p> <p>10 Q. -- correct?</p> <p>11 A. But I also worked with him for hours in Norma</p> <p>12 and when I -- when they came back to the</p> <p>13 Altoona yard.</p> <p>14 Q. On this same day?</p> <p>15 A. On this same day. There was no indication of</p> <p>16 limping or difficulties.</p> <p>17 Q. So when you're -- when you say, This was very</p> <p>18 unusual for Jake, in this Exhibit 1, you're</p> <p>19 meaning that it was unusual for him on that day</p> <p>20 as what you observed that day?</p> <p>21 A. Correct.</p> <p>22 Q. Relative to what he had --</p> <p>23 A. Yes.</p> <p>24 Q. -- been earlier in the day; is that fair?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 103</p> <p>1 it a different way based on what's been written</p> <p>2 here. And, by the way, this sentence is not</p> <p>3 your words; right?</p> <p>4 A. No.</p> <p>5 Q. Okay. But just looking at it for what it is,</p> <p>6 when you say -- or when this document says, He</p> <p>7 seemed confused, you testified earlier that at</p> <p>8 no point you -- that Mr. Tischer exhibited any</p> <p>9 confusion or any lack of coherence in his --</p> <p>10 A. No. He was --</p> <p>11 Q. -- communication.</p> <p>12 A. -- pretty quiet and ready to do as told.</p> <p>13 Q. Okay. And then the next statement or phrase,</p> <p>14 Is not making good decisions. Same thing, you</p> <p>15 have no reason to base that on --</p> <p>16 A. No.</p> <p>17 Q. -- or no -- because he --</p> <p>18 A. Not my words.</p> <p>19 Q. Yeah, not your words. And the weakness in his</p> <p>20 left hand and limping were things that you at</p> <p>21 that point hadn't observed; correct?</p> <p>22 A. Well, I started observing as he was coming back</p> <p>23 out of the porta potty.</p> <p>24 Q. Out of the porta potty. Okay. You said that</p> <p>25 earlier. Then you go on to say -- or this</p>
<p style="text-align: right;">Page 102</p> <p>1 Q. Let's see. The one, two, three more sentences</p> <p>2 down there, the one that -- in that paragraph</p> <p>3 begins, In my opinion, there was something</p> <p>4 wrong with Jake's thinking process. Do you see</p> <p>5 that --</p> <p>6 A. Not yet.</p> <p>7 Q. -- statement?</p> <p>8 A. Not yet.</p> <p>9 Q. Sorry. It's one, two, three --</p> <p>10 A. Now, I do. Yes.</p> <p>11 Q. -- four lines down.</p> <p>12 A. Okay. Yes.</p> <p>13 Q. Sir, is that -- is that a sentence that's not</p> <p>14 your words, that --</p> <p>15 A. Yes.</p> <p>16 Q. Because that was not your opinion, and it's not</p> <p>17 your opinion now?</p> <p>18 A. True.</p> <p>19 Q. The next sentence says, He seemed confused, not</p> <p>20 making good decisions, weakness in his left</p> <p>21 hand and limping. That too isn't your</p> <p>22 language, isn't it?</p> <p>23 A. Well, he didn't make any decisions. He was</p> <p>24 just ready to go back to Norma, if asked.</p> <p>25 Q. And you didn't -- you didn't -- let me just ask</p>	<p style="text-align: right;">Page 104</p> <p>1 document goes on to say, He was clearly not</p> <p>2 himself. Those again -- that's, again, not</p> <p>3 your words; right?</p> <p>4 A. Not my words, no.</p> <p>5 Q. Okay. And then the next sentence says, I heard</p> <p>6 the trainmaster in -- instruct Jake to go back.</p> <p>7 Now, that's not your words because you</p> <p>8 testified earlier that you did not hear Mr.</p> <p>9 Marvin say anything; is that correct?</p> <p>10 A. Where are you?</p> <p>11 Q. The next sentence. It starts, I heard the</p> <p>12 trainmaster instruct Jake to go back, comma, I</p> <p>13 immediately waved both hands --</p> <p>14 A. Well, that is true. I heard the trainmaster</p> <p>15 and whoever else tell me that they wanted the</p> <p>16 crew to go back to Norma.</p> <p>17 Q. Well, let's -- let's be clear about that.</p> <p>18 Earlier on today you testified that what</p> <p>19 happened was that Mr. Tischer and Mr. Franchuk</p> <p>20 came back to the van. And, again, you --</p> <p>21 A. Um-hum.</p> <p>22 Q. -- you had not left the van; correct?</p> <p>23 A. No.</p> <p>24 Q. And as you testified to Mr. Banker earlier,</p> <p>25 the -- that conversation was some 20 --</p>

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<p>1 20 yards away from the front of your van; is</p> <p>2 that correct?</p> <p>3 A. Yes.</p> <p>4 Q. So you're looking through the windshield at the</p> <p>5 conversation that --</p> <p>6 A. Well, I got the open window, and they're over</p> <p>7 there.</p> <p>8 Q. Okay. But earlier you testified that it was</p> <p>9 Mr. Tischer and Mr. Franchuk who actually came</p> <p>10 back and said about going back to Norma.</p> <p>11 A. Right.</p> <p>12 Q. You did not hear that from Mr. Marvin's word --</p> <p>13 mouth; correct?</p> <p>14 A. I'm not sure.</p> <p>15 Q. Okay. So that would be an incorrect statement</p> <p>16 to have that say emphatically, I heard the</p> <p>17 trainmaster instruct Jake to go back, because</p> <p>18 you did not hear that? You don't recall</p> <p>19 hearing that; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Then there's a sentence that begins, There is</p> <p>22 something wrong -- I'm sorry. Yeah. There is</p> <p>23 something wrong with Jake. Next sentence, The</p> <p>24 engineer agreed with me. That's Mr. Franchuk?</p> <p>25 A. Yes.</p>	<p>1 that -- that time that it appears in this</p> <p>2 document, you would have called 911 yourself?</p> <p>3 A. I would have called my manager if -- I would</p> <p>4 have asked Marvin --</p> <p>5 Q. Yeah.</p> <p>6 A. -- do you want no medical attention, or do --</p> <p>7 or are you insistent that he go back. Because</p> <p>8 that's why I shook my hands saying, Do not send</p> <p>9 him back to Norma.</p> <p>10 Q. But you didn't say -- just to be clear, you</p> <p>11 didn't say to Mr. Marvin that Mr. -- at this</p> <p>12 point in time in this document as we are in the</p> <p>13 third -- fourth paragraph here, at that point</p> <p>14 after Mr. Franchuk and Mr. Tischer came back to</p> <p>15 tell you they're going -- they -- they needed</p> <p>16 to go back to Norma, you waved your hands no.</p> <p>17 You did not, to be clear, say to Mr. Marvin</p> <p>18 that, This man needs medical attention;</p> <p>19 correct?</p> <p>20 A. No. What I said was, He is not well.</p> <p>21 Q. Okay. You didn't -- and you said you hollered</p> <p>22 the word "no;" correct?</p> <p>23 A. True.</p> <p>24 Q. But you didn't holler to Mr. Marvin to call</p> <p>25 911; correct?</p>
Page 106	Page 108
<p>1 Q. Then the next sentence says, Jake was not fit</p> <p>2 for duty and needed medical treatment. I think</p> <p>3 you --</p> <p>4 A. That's not -- not mine.</p> <p>5 Q. Took the words out of my mouth. That's one you</p> <p>6 identified earlier as just a statement that is</p> <p>7 not yours, and that's not correct, as you sit</p> <p>8 here today -- strike that. It's not a correct</p> <p>9 --</p> <p>10 A. It's not my words.</p> <p>11 Q. It's not your -- your -- your words?</p> <p>12 A. It's open to debate whether he needed medical</p> <p>13 attent -- attention or not.</p> <p>14 Q. So you don't adopt that statement as your own;</p> <p>15 correct?</p> <p>16 A. No.</p> <p>17 Q. And you don't -- and, therefore, that is not an</p> <p>18 opinion you hold -- held then and nor is it one</p> <p>19 you hold today; is that correct?</p> <p>20 A. It is correct to the time when I found him on</p> <p>21 the floor.</p> <p>22 Q. But not at the time where it appears in this</p> <p>23 document?</p> <p>24 A. Right.</p> <p>25 Q. Okay. Because if that was what you believed at</p>	<p>1 A. No.</p> <p>2 Q. You didn't holler or even speak at any voice to</p> <p>3 Mr. Franchuk to call 911; correct?</p> <p>4 A. No.</p> <p>5 Q. And you didn't -- and you didn't call 911</p> <p>6 yourself; is that --</p> <p>7 A. No.</p> <p>8 Q. Okay. And you could have because you had a</p> <p>9 radio?</p> <p>10 A. I shouldn't have.</p> <p>11 Q. That's --</p> <p>12 A. In my way of thinking that decision was</p> <p>13 Marvin's.</p> <p>14 Q. Okay.</p> <p>15 A. No one else's.</p> <p>16 Q. Nevertheless, you did not tell Mr. Marvin, ask</p> <p>17 Mr. Marvin, or instruct Mr. --</p> <p>18 A. Any more than, No, he's not well, do not send</p> <p>19 him to Norma.</p> <p>20 Q. Okay. Then the next sentence says, The</p> <p>21 trainmaster convinced Jake to just sit down and</p> <p>22 have a bottle of water. That's not your words</p> <p>23 either; correct?</p> <p>24 A. I don't remember.</p> <p>25 Q. The next sentence says, Jake could not use his</p>

<p style="text-align: right;">Page 109</p> <p>1 left hand to open the bottle and needed help to</p> <p>2 unscrew the lid. That's not -- those are not</p> <p>3 your words because you were not in the shanty</p> <p>4 at any time; correct?</p> <p>5 A. Correct.</p> <p>6 Q. And that's where the -- the bottle of water was</p> <p>7 allegedly opened; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Next sentence, Jake should have been taken to</p> <p>10 the hospital at that point. Those aren't your</p> <p>11 words either?</p> <p>12 A. Nope.</p> <p>13 Q. Because certainly if you believed that at the</p> <p>14 time, you would have spoken up and said not</p> <p>15 just that he was not well, you would have said,</p> <p>16 He needs to go to the hospital. There's two</p> <p>17 different things; right?</p> <p>18 A. He needs a doctor's attention.</p> <p>19 Q. Yeah. And you didn't say that at the time?</p> <p>20 A. No.</p> <p>21 Q. Because you didn't believe he needed -- you</p> <p>22 just knew he was -- you had a feeling that he</p> <p>23 was sick?</p> <p>24 A. Yes.</p> <p>25 Q. But not necessarily that he needed to go to a</p>	<p style="text-align: right;">Page 111</p> <p>1 A. Well, from the second half of the sentence that</p> <p>2 I thought was clear sign of stroke is not me.</p> <p>3 Q. Well, and -- okay. And then let's look at the</p> <p>4 first part of the sentence, The trainmaster</p> <p>5 refused to get treat -- get Jake treatment.</p> <p>6 A. I -- I wouldn't say refused to get, and I</p> <p>7 wouldn't have used that expression.</p> <p>8 Q. So it's --</p> <p>9 A. I would have said, We've been waiting for quite</p> <p>10 a while on Marvin to make a decision.</p> <p>11 Q. Okay. And you -- again, you had not spoken to</p> <p>12 Mr. Marvin nor had you suggested to Mr. Marvin</p> <p>13 that he, that -- that he, Mr. Tischer, should</p> <p>14 receive medical treatment; correct?</p> <p>15 A. I believe so.</p> <p>16 Q. And then you say that Mr. -- moving on in that</p> <p>17 sentence that Mr. Marvin, the trainmaster,</p> <p>18 ignored Mr. Tischer's symptoms. You -- you</p> <p>19 don't know that?</p> <p>20 A. I don't know that. That's not my words.</p> <p>21 Q. And that --</p> <p>22 A. He just took his time making a -- a decision.</p> <p>23 Q. And how much time? You don't know?</p> <p>24 A. What seems to me no more than five to ten</p> <p>25 minutes, max. But, again, time is relative,</p>
<p style="text-align: right;">Page 110</p> <p>1 doctor or a hospital?</p> <p>2 A. I have no medical training, so hence no</p> <p>3 decision.</p> <p>4 Q. Okay. Then it goes on to say, that sentence,</p> <p>5 Jake just sat around waiting for a decision</p> <p>6 from the trainmaster. Those aren't your words</p> <p>7 either; correct?</p> <p>8 A. Well, that's what happened, so they might be.</p> <p>9 Q. Well, you observed -- in fairness, you observed</p> <p>10 Mr. Tischer resting until, as you testified,</p> <p>11 what happened next; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. But you don't know whether there was a decision</p> <p>14 pending from Mr. Marvin; you don't know that</p> <p>15 because you weren't communicating directly with</p> <p>16 Mr. Marvin?</p> <p>17 A. Well, we were waiting for what to do, do we go</p> <p>18 to Norma or what.</p> <p>19 Q. Then next it says, The trainmaster refused to</p> <p>20 get Jake treatment and ignored his symptoms,</p> <p>21 that I thought was clear signs of -- of a</p> <p>22 stroke. That entire sentence, I think as you</p> <p>23 pointed out earlier, is not your words, and</p> <p>24 it's not something you agree with; is that</p> <p>25 correct?</p>	<p style="text-align: right;">Page 112</p> <p>1 so...</p> <p>2 Q. And having not had any conversations with Mr.</p> <p>3 Marvin, you do not know what was in his head or</p> <p>4 what he was discussing with --</p> <p>5 A. Well --</p> <p>6 Q. -- others, or what he was --</p> <p>7 A. Well, remember, he was surrounded by several</p> <p>8 other crew members from other trains.</p> <p>9 Q. Right.</p> <p>10 A. So --</p> <p>11 Q. Whose names you don't know?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. Then that last short sentence in that</p> <p>14 paragraph says, He wanted the work done. I</p> <p>15 assume you meant that's --</p> <p>16 A. Jake was ready to go and do whatever he was</p> <p>17 asked.</p> <p>18 Q. So that's -- that sentence is referring to Mr.</p> <p>19 Tischer, that --</p> <p>20 A. Yes.</p> <p>21 Q. -- want -- wanting to do the work; is that</p> <p>22 correct?</p> <p>23 A. Yes. But I wouldn't use the word "wanted." I</p> <p>24 would say -- I would say that he was ready to</p> <p>25 be given a task and -- and take it up on it --</p>

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<p>1 Q. Okay.</p> <p>2 A. -- take up on it.</p> <p>3 Q. All right. Just a few more on this, sir. The</p> <p>4 next paragraph starts, Eventually, the</p> <p>5 trainmaster told me to drive Jake to the depot.</p> <p>6 That's inconsistent with what you testified to</p> <p>7 earlier today. Mr. Marvin did not specifically</p> <p>8 ask you; it was Mr. Franchuk who relayed that</p> <p>9 information to you; correct?</p> <p>10 A. It was a relayed information, yes.</p> <p>11 Q. You hand -- you -- you indicated that any use</p> <p>12 of the word "eventually" in this document is --</p> <p>13 is, I think you said, generally meant to be a</p> <p>14 couple of minutes?</p> <p>15 A. Exactly.</p> <p>16 Q. The -- the -- the next page, sir, Page 2 of</p> <p>17 Exhibit 1, the first full paragraph begins, To</p> <p>18 me, Jake needed medical treatment early on.</p> <p>19 That's -- those aren't your words?</p> <p>20 A. No.</p> <p>21 Q. You didn't believe that now, and it's not an</p> <p>22 opinion looking back that you would have</p> <p>23 adopted at that time; correct?</p> <p>24 A. Well, this is where the -- this is not neither</p> <p>25 black or white, you know. When you're seeing</p>	<p>1 A. Correct.</p> <p>2 Q. Next sentence, Jake showed signs of a serious</p> <p>3 medical problem when the train arrived at</p> <p>4 Altoona. Well, that's not --</p> <p>5 A. That's not true.</p> <p>6 Q. -- that's not true?</p> <p>7 A. No.</p> <p>8 Q. And it goes on to say, And should have been</p> <p>9 taken to the hospital or at least an ambulance</p> <p>10 should have been called. Again, not true as --</p> <p>11 A. Not my words.</p> <p>12 Q. Not your words. Last sentence, It was evident</p> <p>13 Jake's reasoning was flawed, his judgment was</p> <p>14 impaired when the trainmaster was first asking</p> <p>15 him to go back to -- to Norma. Those aren't</p> <p>16 your words because you were in the van, you did</p> <p>17 not hear that conversation; isn't that correct?</p> <p>18 Because you testified earlier that your -- your</p> <p>19 recollection was that Mr. Tischer was actually</p> <p>20 coherent and answering --</p> <p>21 A. Yes.</p> <p>22 Q. -- very clearly anyone's questions; isn't that</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. So that makes that sentence, again, false and</p>
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<p>1 someone stumble and having difficulty with his</p> <p>2 left side, I -- I -- I offer that to debate</p> <p>3 because I am not going to make a decision that</p> <p>4 he needs medical treatment earlier on.</p> <p>5 Q. Or at any time because that's --</p> <p>6 A. Or at any time.</p> <p>7 Q. -- because that's not something that you --</p> <p>8 A. I'm not trained for it.</p> <p>9 Q. And it's not something you even thought of at</p> <p>10 the time?</p> <p>11 A. No.</p> <p>12 Q. So those aren't your words, and they should be</p> <p>13 stricken from this document?</p> <p>14 A. I think so.</p> <p>15 Q. Then the next sentence, same thing, The train</p> <p>16 crew were trying to get the trainmaster to get</p> <p>17 him treatment, but the trainmaster was</p> <p>18 concerned about finishing the job. That's not</p> <p>19 your sentence? Those aren't your words;</p> <p>20 correct?</p> <p>21 A. Seemingly that's what was happening, but --</p> <p>22 Q. You don't know that for -- for --</p> <p>23 A. I don't know for sure.</p> <p>24 Q. You don't know any of that for certain in that</p> <p>25 sentence; correct? Correct?</p>	<p>1 not something you would have adopted; correct?</p> <p>2 A. Again, it's not my opinion, not my thinking.</p> <p>3 Q. And then that last sentence, same thing, quote,</p> <p>4 He was confused and disoriented and not</p> <p>5 thinking straight. That's just not true,</p> <p>6 correct, because you testified earlier that you</p> <p>7 --</p> <p>8 A. He answered the questions coherently at the</p> <p>9 depot once I took him back.</p> <p>10 Q. And clearly?</p> <p>11 A. And clearly.</p> <p>12 Q. Okay. So that's not true?</p> <p>13 A. (Indicating.)</p> <p>14 Q. And that's -- is that correct?</p> <p>15 A. I don't know if he was confused, and I don't</p> <p>16 know if he was disoriented and limping and --</p> <p>17 and stumbling around is a sign of that. I know</p> <p>18 I didn't say that. Okay.</p> <p>19 Q. So that's a sentence you would disavow?</p> <p>20 A. Yeah. Some of these embellishments are not</p> <p>21 mine.</p> <p>22 Q. Do you appreciate that somebody would take your</p> <p>23 version of a story and turn it upside down like</p> <p>24 this?</p> <p>25 A. I wouldn't call it turning it upside down. I</p>

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<p>1 would just -- saying adding more than is 2 required or adding more than is accurate. 3 Don't forget I'm an accurate, precise person. 4 Q. Right. And that's all the more -- I -- I would 5 imagine that would be all the more troubling to 6 you and frustrating to you that someone would 7 take -- 8 A. This is what I pointed out, and after some 9 discussion, you know, I let it ride. I didn't 10 expect this kind of grueling. 11 Q. You just wanted to be -- to move on and be done 12 and then -- well, strike that. That's -- so 13 just to be clear about a few things, and I do 14 want to ask you about the statement, few -- 15 less -- less questions about the statement that 16 you provided to Ms. Lukehart. Just to be 17 clear, at any time during that day in question, 18 Mr. Tischer never asked you to take him to a 19 hospital? 20 A. No. That's true. 21 Q. Mr. Tischer never asked you to take him to a 22 doctor for medical care? 23 A. True. 24 Q. Mr. Tischer never asked you to call 911 on his 25 behalf?</p>	<p>1 you had a chance to review the entirety of the 2 document; right? 3 A. Yes. 4 Q. Is that a more accurate description of your 5 words -- strike that. Is that a more accurate 6 telling of your recollection of events? 7 A. You say "is that." What is "that"? 8 Q. Is that statement, Exhibit 2, that you provided 9 Ms. -- 10 A. Oh. 11 Q. -- Lukehart Hobbs, is that more of a more 12 accurate telling of the story as compared to 13 Exhibit 1? 14 A. I would think so. 15 Q. On Page 2 you indicated to Ms. Lukehart Hobbs 16 that you -- that Mr. Tischer was riding with 17 you in the passenger's seat of the van; is that 18 correct? The one in 11 there on Page 2. 19 A. Yes. 20 Q. And that was typical of that day, at any time 21 he was always -- 22 A. A conductor is typically sitting next to the 23 driver, and the engineer sits in the back. 24 Q. And you're not familiar with the work that 25 is -- that's done by a conductor specifically?</p>
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<p>1 A. True. 2 Q. Mr. Tischer was never unable to speak? 3 A. That's not true. He answered questions 4 coherently and clearly. 5 Q. Let me ask the -- there was a double negative. 6 Mr. Tischer at all times was able to speak 7 throughout the -- your interactions with him 8 that day in a clear and co -- coherent manner, 9 as you observed? 10 A. Yes. 11 Q. Let's look at Exhibit 2 then, sir, the -- the 12 statement that you provided to Ms. Lukehart 13 Hobbs. That was a statement you gave on 14 September 29 of 2017; is that correct? It's 15 either at the top -- 16 A. Yes, I see it. I'm not certain of the date. 17 You can -- 18 Q. Oh, sure, sure. 19 A. Okay. 20 Q. I understand that. No reason to believe it 21 wasn't that date; is that right? 22 A. (Indicating.) 23 Q. Okay. You had a chance today -- well, this 24 morning with -- with your -- with Mr. Cohen and 25 then again here today during the deposition,</p>	<p>1 A. Well, I'm very familiar in observing what's 2 being done. 3 Q. But you -- 4 A. So I can answer questions on that. 5 Q. Okay. But you're not -- you've obviously never 6 worked for a railroad; you've never been a 7 conductor, so you don't -- 8 A. True. 9 Q. -- understand the details of what's done and 10 when -- 11 A. True. 12 Q. Okay. And on Page 4 you indicate that the 13 first thing you noticed -- see at Line 6 you're 14 asked, When was the -- your sort of first 15 notice of something -- something happening with 16 Mr. Tischer, and you answered, His left hand. 17 He had trouble undoing his seat belt. Do you 18 see that? 19 A. Yes, true. 20 Q. And you go on to answer a question about, That 21 was getting out and around the shanty area, and 22 you said, Yes; is that correct? 23 A. Yes. 24 Q. Consistent with what you said today, that's the 25 first time you noticed any symptoms that caught</p>

<p style="text-align: right;">Page 121</p> <p>1 your attention?</p> <p>2 A. Yes.</p> <p>3 Q. And at the time you noticed that particular</p> <p>4 issue with the seat belt, it was only you and</p> <p>5 he, you, Mr. --</p> <p>6 A. In the van, yes.</p> <p>7 Q. You and Mr. Tischer were the only ones in the</p> <p>8 van; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Mr. Franchuk was down at the other end</p> <p>11 of the yard?</p> <p>12 A. In the engine.</p> <p>13 Q. In the engine at -- still at that time. When</p> <p>14 you observed Mr. Tischer going to the porta</p> <p>15 potty, there again, were you the only one who</p> <p>16 was observing Mr. Tischer walk towards the</p> <p>17 porta potty?</p> <p>18 A. Walking towards the potty, I'm not sure. The</p> <p>19 crowd was already there. Coming out for sure</p> <p>20 many people saw him stumbling.</p> <p>21 Q. But going in -- certainly him leaving the van,</p> <p>22 you were the only one to observe that; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And then you're just not sure about that --</p> <p>25 that time walking from the van to the porta</p>	<p style="text-align: right;">Page 123</p> <p>1 that's a -- that's a correct statement even --</p> <p>2 A. Yes.</p> <p>3 Q. -- even as today; correct?</p> <p>4 A. Yes. Well, I mean --</p> <p>5 Q. I mean, at the time it was a correct statement.</p> <p>6 A. At the time, correct, yes.</p> <p>7 Q. You estimated that -- on Page 6 you estimated</p> <p>8 that that conversation among Mr. Franchuk, Mr.</p> <p>9 Tischer, and Mr. Marvin took about 10 minutes.</p> <p>10 That's Line 18 through 22. Is that correct?</p> <p>11 A. Yeah, I would say about 10 minutes.</p> <p>12 Q. So from the time you first saw Mr. Tischer come</p> <p>13 out of the bathroom until Mr. Marvin -- you</p> <p>14 heard from Mr. Franchuk that Mr. Marvin would</p> <p>15 like you to take Mr. Tischer back to the depot</p> <p>16 --</p> <p>17 A. Yes.</p> <p>18 Q. -- that elapsed time was about 10 to 15 minutes</p> <p>19 at most; is that correct?</p> <p>20 A. Best of my knowledge.</p> <p>21 Q. And if we allow for five minutes or four</p> <p>22 minutes for Mr. Tischer to be in the porta</p> <p>23 potty, that would then total the 20 minutes</p> <p>24 that we see on the GPS --</p> <p>25 A. Looks like it, yes.</p>
<p style="text-align: right;">Page 122</p> <p>1 potty, whether you were the only witness or</p> <p>2 whether there was someone else?</p> <p>3 A. There was no stumbling on the way there.</p> <p>4 Q. On the way in. You only noticed that on the</p> <p>5 way out?</p> <p>6 A. Yes.</p> <p>7 Q. So other than the seat belt --</p> <p>8 A. Problem.</p> <p>9 Q. -- problem, you didn't notice any other</p> <p>10 problems with Mr. Tischer until he --</p> <p>11 A. Was coming out of the potty, yep.</p> <p>12 Q. It was at that time you saw Mr. Tischer talking</p> <p>13 with Mr. Franchuk and Mr. Marvin when he --</p> <p>14 A. Right.</p> <p>15 Q. -- after he got out of the porta potty --</p> <p>16 A. Right.</p> <p>17 Q. -- is that right? Any estimate as to how long</p> <p>18 he was in the porta potty?</p> <p>19 A. No. Whatever it takes. I don't know.</p> <p>20 Q. Sure. As you told Ms. Lukehart Hobbs on Page</p> <p>21 5, Line 17, at -- at no point did you say to</p> <p>22 anyone or even in your own head consider that</p> <p>23 Mr. Tischer was having a stroke?</p> <p>24 A. True.</p> <p>25 Q. You said, It hadn't occurred to me yet. And</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. -- document, Exhibit 3 --</p> <p>2 A. Um-hum.</p> <p>3 Q. -- occurring at 8:30 -- I'm sorry -- 8:15 p.m.;</p> <p>4 is that correct?</p> <p>5 A. (Indicating.)</p> <p>6 Q. Is that correct?</p> <p>7 A. I believe so.</p> <p>8 Q. Okay.</p> <p>9 A. My -- my uncertainty of the timing is written</p> <p>10 in stone. You can ask me over and over.</p> <p>11 Q. Well, that's why the GPS data is -- is very --</p> <p>12 A. Comes in handy, yes.</p> <p>13 Q. Yes. Just getting -- rounding the bend here,</p> <p>14 sir, with my questioning. So as you were</p> <p>15 driving Mr. Tischer back to the depot, he had</p> <p>16 this what you described as an explosive</p> <p>17 vomiting event?</p> <p>18 A. Right.</p> <p>19 Q. That didn't make you think he was having a</p> <p>20 stroke; correct?</p> <p>21 A. It didn't make me think he was having a stroke,</p> <p>22 true.</p> <p>23 Q. Didn't cause you to call 911?</p> <p>24 A. No.</p> <p>25 Q. Didn't cause you to -- to drive Mr. -- to turn</p>

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<p>1 around and just take Mr. --</p> <p>2 A. We were within sight of the depot, so my goal</p> <p>3 was to get him to the depot.</p> <p>4 Q. But it --</p> <p>5 A. Where he would have more help.</p> <p>6 Q. And it didn't cause you -- the explosive</p> <p>7 vomiting event did not cause you to take Mr.</p> <p>8 Tischer straight to the hospital and avoid the</p> <p>9 depot; correct?</p> <p>10 A. No.</p> <p>11 Q. And you were the only one with him in the van</p> <p>12 when he was --</p> <p>13 A. True.</p> <p>14 Q. -- having this vomiting event --</p> <p>15 A. Right.</p> <p>16 Q. -- correct? You say on Page 8 of the</p> <p>17 statement, which is Exhibit 2, sir, that --</p> <p>18 looking at Page -- at Line 15 -- starting at</p> <p>19 Line 14, I suppose, all the way down to Line</p> <p>20 19, you were asked about how long it took</p> <p>21 from -- you to drive from the shanty to the</p> <p>22 depot, including the time it took to allow Mr.</p> <p>23 Tischer to -- to -- to vomit, and you</p> <p>24 estimated, Well, it's a couple minutes --</p> <p>25 quoting you here on Line 15, It's a couple of</p>	<p>1 Q. And you arrived at the depot at 8:53,</p> <p>2 ultimately?</p> <p>3 A. Right.</p> <p>4 Q. So that's a 15-minute -- I'm sorry -- 18</p> <p>5 minutes. And is that a -- now looking at this</p> <p>6 GPS data, is that a better understanding for us</p> <p>7 about the time between the time you left the</p> <p>8 shanty and --</p> <p>9 A. Very likely. Though I -- at this point if I</p> <p>10 got to the shanty at 8:53, then at 8:49, four</p> <p>11 minutes prior to that, is when I stopped for</p> <p>12 him to finish his vomiting.</p> <p>13 Q. Okay. So then when you arrive at the depot --</p> <p>14 back to Exhibit 2, the statement, the recorded</p> <p>15 statement. On Page 9 when you arrive back to</p> <p>16 the depot, you told Ms. Lukehart Hobbs that --</p> <p>17 that Mr. Tischer tried -- starting on Line 2 --</p> <p>18 he tried to undo his seat belt, he couldn't.</p> <p>19 He reached over and undid it with his right</p> <p>20 hand, and he tried to get out, but his left</p> <p>21 foot was stuck on the floor. He was dragging</p> <p>22 it, so I said, Stay, I'll get help. I came in</p> <p>23 here, and there's nobody there. Is that</p> <p>24 correct?</p> <p>25 A. True.</p>
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<p>1 miles drive from the shanty to here, so with</p> <p>2 the stop for his vomiting, maybe another minute</p> <p>3 or two, but it wasn't that long. You were then</p> <p>4 asked to -- to agree whether that was under 10</p> <p>5 minutes, and you said yes; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. If we look back at Exhibit 3 then, sir,</p> <p>8 if you -- if it's -- if you left the shanty at</p> <p>9 8:35 p.m., there -- that's on Page 6 of this</p> <p>10 document. If you left at 8:35 p.m., parked for</p> <p>11 one minute at 8:38 p.m. so that Mr. Tischer</p> <p>12 could finish vomiting with the open door,</p> <p>13 recommenced your trip at 8:39 -- and then</p> <p>14 flipping the page -- arrived back -- arrived to</p> <p>15 the depot at 8:49 p.m., that's consistent with</p> <p>16 what your general recollection was when you</p> <p>17 gave the statement to Ms. Lukehart; correct?</p> <p>18 A. Well, this -- there are two one-minute stops,</p> <p>19 and they're only a few minutes apart. So there</p> <p>20 is a one-minute stop at 8:38, there's a</p> <p>21 one-minute stop at 8:49, so that to me says I</p> <p>22 left the depot -- I left the -- the yard at</p> <p>23 8:30-something. 39?</p> <p>24 Q. 8:39.</p> <p>25 A. Okay. And 8 -- gadzooks.</p>	<p>1 Q. And none of that caused you to call 911, is</p> <p>2 that correct, yourself?</p> <p>3 A. True.</p> <p>4 Q. You didn't instruct or ask or plead with anyone</p> <p>5 to call 911 on your --</p> <p>6 A. No.</p> <p>7 Q. -- on your behalf or his behalf; correct? Is</p> <p>8 that correct? Is that correct, sir?</p> <p>9 A. Yes.</p> <p>10 Q. And you didn't get back in the vehicle and</p> <p>11 drive Mr. Tischer to the hospital; is that</p> <p>12 correct?</p> <p>13 A. He was lying on the floor when I came out of</p> <p>14 the depot.</p> <p>15 Q. Okay.</p> <p>16 A. I could not lift him. Nobody else could.</p> <p>17 Q. I don't want to be more redundant than I may</p> <p>18 have been already, but I just wanted to make</p> <p>19 sure from Exhibit 2 that your statements made</p> <p>20 to Ms. Lukehart Hobbs were those that you made</p> <p>21 today and still your -- still what is an</p> <p>22 accurate recollection. You say on Page 10 that</p> <p>23 Mr. Tischer was, quote, Coherent all the way.</p> <p>24 That's Lines 8 and 9. Is that correct?</p> <p>25 A. Where are you?</p>

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<p>1 Q. Page 10, Lines 8 and 9. This is --</p> <p>2 A. I think so, yes.</p> <p>3 Q. Okay. And then after the -- turning to Page --</p> <p>4 still on Page 10. After the EMTs and police</p> <p>5 arrived, they asked Mr. Tischer questions, and</p> <p>6 it's your testimony that Mr. Tischer was</p> <p>7 responding clearly; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. On Page 14 -- Page 14, Line 3, Ms. Lukehart</p> <p>10 Hobbs asked you that -- you had mentioned</p> <p>11 before we got on the record that at least at</p> <p>12 some point Jake had wanted to go take the</p> <p>13 second trip to Norma; in other words, he wanted</p> <p>14 to go make --</p> <p>15 A. Well --</p> <p>16 Q. -- that trip, and then --</p> <p>17 A. -- he was willing to.</p> <p>18 Q. Sure.</p> <p>19 A. If asked.</p> <p>20 Q. Okay.</p> <p>21 A. So in that difference between wanting to and</p> <p>22 willing to is --</p> <p>23 Q. Well, let me -- let me read your answer and</p> <p>24 just ask -- I'm going to ask you if that's</p> <p>25 still your testimony. At Line 6 your answer to</p>	<p>1 Q. And when did you begin your chemotherapy</p> <p>2 treatments, if you can recall?</p> <p>3 A. Within a month or two or three. I'm not sure.</p> <p>4 Q. And you're -- you've finished the course of</p> <p>5 treatment?</p> <p>6 A. Three.</p> <p>7 Q. Three different sets of --</p> <p>8 A. Three different courses in five years, yeah.</p> <p>9 Q. What prognosis have you been given, if any?</p> <p>10 A. None. We're being monitored.</p> <p>11 Q. Good, good.</p> <p>12 A. So I may live to 120 or may not live to</p> <p>13 tomorrow. I don't know.</p> <p>14 Q. Let's hope it's the first. Just give me a</p> <p>15 second to look at my other notes. Oh, you</p> <p>16 testified earlier that you -- you heard the</p> <p>17 ambulance crew speaking with Mr. Tischer and</p> <p>18 Mr. Tischer responding.</p> <p>19 A. Yes.</p> <p>20 Q. Do you remember the questions -- if -- if you</p> <p>21 -- if you can, do you remember any of the</p> <p>22 questions they were asking Mr. Tischer and what</p> <p>23 his responses to them were?</p> <p>24 A. No, I could only guess now.</p> <p>25 Q. Okay.</p>
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<p>1 that question was, I don't think he realized</p> <p>2 that he wasn't feeling well.</p> <p>3 A. True.</p> <p>4 Q. And then at Line 14 your answer -- your further</p> <p>5 answer was, quote, He just -- he was okay with</p> <p>6 going back to work; is that correct?</p> <p>7 A. He was -- he was ready to go back if asked,</p> <p>8 yes.</p> <p>9 Q. And then in Line 16, He didn't protest in any</p> <p>10 sense; is that correct?</p> <p>11 A. True.</p> <p>12 Q. And that's still your recollection today;</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. And then at the very end Ms. Lukehart Hobbs</p> <p>16 asked you, Has everything you've told me during</p> <p>17 the taking of this statement been true and</p> <p>18 complete to the best of your recollection, and</p> <p>19 you answered, Absolutely.</p> <p>20 A. Yes.</p> <p>21 Q. And in looking at it again today, you would</p> <p>22 again agree with that; correct?</p> <p>23 A. Yes.</p> <p>24 Q. When were you diagnosed with the lymphoma, sir?</p> <p>25 A. About five years back.</p>	<p>1 A. But they were the same questions that the</p> <p>2 police asked him prior to the ambulance</p> <p>3 arriving.</p> <p>4 Q. Did they ask him when his -- when his symptoms</p> <p>5 began? Do you remember that at all? You may</p> <p>6 not.</p> <p>7 A. I -- it may have been one of the questions, and</p> <p>8 he didn't know, and I didn't know until he</p> <p>9 started stumbling out of the potty.</p> <p>10 Q. Do you remember specifically, though, to be</p> <p>11 clear --</p> <p>12 A. No.</p> <p>13 Q. -- what Mr. Tischer --</p> <p>14 A. No.</p> <p>15 Q. -- responded to to that question?</p> <p>16 A. No.</p> <p>17 Q. I -- you were asked if whether you had a cell</p> <p>18 phone with you in your van and you --</p> <p>19 A. Yes.</p> <p>20 Q. -- said -- I think the question was was it a</p> <p>21 personal or a --</p> <p>22 A. Both.</p> <p>23 Q. -- corporate phone.</p> <p>24 A. There's a company phone and my own phone.</p> <p>25 Q. So you had two different cell phones?</p>

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<p>1 A. Yes.</p> <p>2 Q. And then the radio?</p> <p>3 A. Right.</p> <p>4 Q. Any other means of communication, outward</p> <p>5 communication --</p> <p>6 A. No.</p> <p>7 Q. -- audio communication? None?</p> <p>8 A. (Indicating.)</p> <p>9 Q. Okay.</p> <p>10 A. Not besides shouting.</p> <p>11 Q. Sure. And then I was unclear at the very</p> <p>12 beginning when you said you enter your time,</p> <p>13 you keep maybe a handwritten --</p> <p>14 A. Yes.</p> <p>15 Q. -- log of your time and --</p> <p>16 A. Yes.</p> <p>17 Q. -- what you were doing. And then you enter</p> <p>18 your time. Did you do -- on that day do you</p> <p>19 have a recollection of entering your time on</p> <p>20 the tablet that was provided to you in -- in</p> <p>21 the van?</p> <p>22 A. It was required of you as one of your job</p> <p>23 functions.</p> <p>24 Q. Or else you don't get paid?</p> <p>25 A. Otherwise, you get no money --</p>	<p>1 sir.</p> <p>2 MR. COHEN: Take a five-minute break.</p> <p>3 MR. BANKER: Sure.</p> <p>4 VIDEOGRAPHER: Off record. The time is</p> <p>5 4:12.</p> <p>6 (A break was taken.)</p> <p>7 VIDEOGRAPHER: We're back on the record.</p> <p>8 The time is 4:19.</p> <p>9 BY MR. COHEN:</p> <p>10 Q. Good afternoon, Mr. Lux. My name is Michael</p> <p>11 Cohen, and I represent PTI. Mr. Lux, I want to</p> <p>12 go through your employment history with PTI a</p> <p>13 bit first. Do you recall around when your</p> <p>14 first round of employment with PTI first began?</p> <p>15 A. I'm guesstimating around 2007, '08. Something</p> <p>16 like that. No. It would be '08 -- '08 or '09.</p> <p>17 I'm not sure.</p> <p>18 Q. Okay. And do you recall approximately how long</p> <p>19 you were employed by PTI during that time</p> <p>20 frame?</p> <p>21 A. Again, I'm not sure. I would say maximum one</p> <p>22 year.</p> <p>23 Q. Okay. And when you became employed by PTI that</p> <p>24 first time around, did PTI provide you with</p> <p>25 training?</p>
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<p>1 Q. Right.</p> <p>2 A. -- yes.</p> <p>3 Q. And in that -- just help me out. I'm trying to</p> <p>4 visualize this. When you're entering that</p> <p>5 time, is it a point to point, you know, I did</p> <p>6 this from this time to this time, then I did</p> <p>7 the next task, or is it just more of a I -- I</p> <p>8 clocked in and I clock out and that makes my</p> <p>9 day?</p> <p>10 A. Let me give you an example.</p> <p>11 Q. Yeah.</p> <p>12 A. I'm driving them up to Norma, and they need a</p> <p>13 cup of coffee on the way.</p> <p>14 Q. Sure.</p> <p>15 A. So I got to stop at Kwik Trip. I got to log my</p> <p>16 stop at Kwik Trip. Okay. Which you'll</p> <p>17 probably see in that verbose GPS recordings.</p> <p>18 Q. And you got paid that day, I take it? You got</p> <p>19 paid for your work that day?</p> <p>20 A. I believe so.</p> <p>21 Q. And it was accurate?</p> <p>22 A. I haven't bothered, you know, because it was so</p> <p>23 low priority compared to my illness to</p> <p>24 double-check.</p> <p>25 MR. HAYDEN: I understand. Thank you,</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. Did they provide you with training</p> <p>3 regarding how to drive a van?</p> <p>4 A. Yes.</p> <p>5 Q. And did they provide you with training</p> <p>6 regarding first aid?</p> <p>7 A. Not even CPR, if I remember correctly. But</p> <p>8 most of us had CPR from prior experience.</p> <p>9 Q. Okay. And -- and did you have first-aid</p> <p>10 training from prior experience?</p> <p>11 A. Just CPR.</p> <p>12 Q. Okay. And do you recall when -- approximately</p> <p>13 when you became employed by PTI that second</p> <p>14 time around?</p> <p>15 A. It would be after a chemotherapy session, so I</p> <p>16 have zero idea. Let me just think. I would</p> <p>17 guesstimate around 2014 or so.</p> <p>18 (Exhibit 5 marked for identification.)</p> <p>19 MR. COHEN: Okay. I'm handing you what's</p> <p>20 been marked as Exhibit 5 for identification</p> <p>21 purposes. Okay. Could you take a look through</p> <p>22 those documents, and let me know when you've</p> <p>23 reviewed them.</p> <p>24 MR. BANKER: Before you ask this witness</p> <p>25 any questions about it, I guess I would object</p>

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<p>1 to the extent this document hasn't been 2 produced in discovery. Unless I'm mistaken, I 3 haven't seen this document before. 4 BY MR. COHEN: 5 Q. Okay. Please take a look, and let me know when 6 you've re -- 7 A. Will do. 8 MR. BANKER: Well, before we ask him any 9 questions, has it been produced in discovery? 10 MR. COHEN: I'm happy to discuss this off 11 the record, if you wish. 12 MR. BANKER: I'd rather discuss it on the 13 record, actually, because I've never seen this 14 document before. So you're putting a document 15 in front of the witness asking questions about 16 it when it hasn't been disclosed, so I -- 17 MR. COHEN: I believe we received some 18 document requests from your office 19 approximately a week ago. 20 MR. BANKER: You have initial disclosures 21 that have never been made in this case, to my 22 knowledge. 23 MR. COHEN: Nor do I believe they're due 24 at this point. 25 MR. BANKER: Really? When do you believe</p>	<p>1 A. Well, it's an application of employment. 2 Q. Is this an application of employment for 3 employment with PTI? 4 A. Looks like it. 5 Q. Is this your application for employment? 6 A. It's my writing. 7 Q. Okay. And is the third page of this exhibit 8 signed by you? 9 A. Yes. 10 Q. And is it dated? 11 A. Yes. 12 Q. What's the date? 13 A. '17. 14 Q. Okay. And is that September? 15 A. July. 16 Q. I'm sorry. July 15th of 2017? 17 A. Looks like it. 18 Q. Okay. Would it be fair to say that your second 19 round of employment with PTI, at least you 20 applied for that position on that date? 21 A. I think so, yes. 22 Q. Okay. On the second page of this document did 23 you list your employment history? 24 A. Looks like some of it, partial. 25 Q. Okay. And it looks like back to 2014?</p>
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<p>1 they're due? 2 MR. COHEN: I believe they're due next 3 week. 4 MR. BANKER: Okay. And so is it your 5 position that these will be produced in the 6 course of discovery? 7 MR. COHEN: These documents are being 8 produced right now and will be produced again 9 when our discovery is due and will -- and they 10 will bear Bates Stamps, in fact. 11 MR. BANKER: Okay. 12 BY MR. COHEN: 13 Q. Please go ahead and review these, and let me 14 know when your review is complete. 15 A. Well, how thorough a job do you want me to do? 16 Q. Just so -- to familiarize yourself with the 17 documents. 18 A. Okay. I have familiarized myself. 19 Q. Okay. Can you tell me what the first three 20 pages are? 21 A. Open-ended questions, I love them. 22 Q. Sure. Can you tell me what the first three -- 23 A. How long do you have? 24 Q. Can you tell me what the title of the first 25 three pages are.</p>	<p>1 A. Well, if at the very top of Page -- whatever -- 2 2 is Honeywell, London, England, and that would 3 be 1965. 4 Q. Is it the -- where it says Employer Name: Per 5 Mar -- 6 A. Yes. 7 Q. -- what is Per Mar? 8 A. Per Mar is a security company employed by large 9 companies. And for a while I was a security 10 officer at the veterans office in Chippewa and 11 also Menards. 12 Q. And were you employed for Per Mar from 2016 -- 13 just during the year 2016? 14 A. There's the first sign of cancer, yeah. And 15 then followed by U-Bid, which is a company 16 owned by Bill Northcott and -- 17 Q. Was that in 2015? 18 A. Looks like it, yes. So they would come before 19 Per Mar. 20 Q. Okay. And were you a driver for U-Bid? 21 A. Yes. 22 Q. All right. And how about before U-Bid? 23 A. Well, Renzenberger I was a driver for. 24 Q. Okay. Going -- 25 A. And that was 2014. Okay. Going back --</p>

35 (Pages 137 to 140)

1 Q. Going back to Per Mar in 2016, for how long
2 approximately, if you can recall, did you work
3 for Per Mar? Was it a matter of months?
4 A. It would be close to a year. I -- I think the
5 cancer stopped it. See, the starting I assume
6 is a month. Oh, no. That's -- no, no. That's
7 the hourly wage. Okay. So I don't know.
8 Q. Okay. Did you receive any training from Per
9 Mar either before you began your employment
10 duties or during the course of your employment
11 duties?
12 A. Just classroom-type.
13 Q. What kind of classroom-type training did you
14 receive?
15 A. Well, what are the employee's responsibility as
16 a security officer.
17 Q. Okay. Did you receive any first-aid-type
18 training or emergency training --
19 A. No.
20 Q. -- from Per Mar? Did you receive any training
21 from Per Mar regarding how to identify the
22 signs of a stroke?
23 A. No.
24 Q. Going to U-Bid, you were -- it -- it appears
25 that you were a driver during 2015; is that

1 correct?
2 A. Yes.
3 Q. Okay. Did you receive any training from U-Bid
4 either during or before your employment?
5 A. No.
6 Q. They provided you with no training?
7 A. No. I could drive, and that's all they
8 required.
9 Q. Okay. Did they provide you with any first-aid
10 training?
11 A. This is where I'm shaky, you know, in my
12 memory. They may have, but it was -- it being
13 a duplicate, how strongly do you pay attention.
14 Q. Sure. Do you specifically recall that they
15 provided you with any training regarding how to
16 identify the signs of a stroke?
17 A. No.
18 Q. Let's go to Renzenberger. Did they provide you
19 with any first-aid training --
20 A. No.
21 Q. -- before or during your employment with them?
22 A. No.
23 Q. Okay. Are you sure they didn't or --
24 A. I'm positive.
25 Q. All right.

1 A. The reason I'm positive is the guy came in --
2 the manager came in from Chicago, and within
3 two hours we were done and hired and ready to
4 drive, so...
5 Q. Okay. All right. I am going to -- well, do
6 you recall when you began your second round
7 of -- started your employment duties sec -- the
8 second time around with PTI?
9 A. Following U-Bid and before Per Mar, I worked
10 for Walco with U-Bid, which is again a
11 different route through northern Wisconsin.
12 Again, somewhere in there --
13 Q. Let me stop you for a second. You -- you
14 applied for employment the second time around
15 on July 15th, 2017?
16 A. Yes.
17 Q. Okay. Do you recall approximately how long
18 after you submitted your application you
19 actually began your employment duties?
20 A. Probably right away.
21 Q. Okay. Before you began your employment duties,
22 did PTA provide you -- PTI provide you with any
23 training the second time around?
24 A. There was classroom training on what's required
25 of a driver, especially near trains.

1 Q. Okay.
2 A. So lots of safety measures.
3 Q. All right. And could you -- and did you --
4 were you provided a driver's manual --
5 A. Yes.
6 Q. -- upon your hiring by --
7 A. Yes.
8 Q. -- PTI? And was that during the course of your
9 classroom training?
10 A. Or prior.
11 Q. Prior. And this is all before you hit the
12 road?
13 A. Yeah. I'm not certain as to what time you get
14 the driver's --
15 Q. Okay.
16 A. -- handbook.
17 Q. Could you turn to the third page -- the fourth
18 page of Exhibit 5. Is this a document entitled
19 Driver Operating Requirements?
20 A. Yes.
21 Q. And does this bear your signature at the
22 bottom?
23 A. Yes.
24 Q. And what's the date of your signature?
25 A. 7/15/17.

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<p>1 Q. Okay. And does this provide a non-exhaustive 2 list of your -- of your obligations and 3 operating requirements as a PTI driver? 4 A. The whole book is -- you have a copy of it -- 5 half-an-inch thick. 6 Q. Is this part of the driver's -- 7 A. Yes. 8 Q. -- manual? 9 A. Yes. 10 Q. Okay. And could you turn to the next page. 11 A. Yep. 12 Q. And is this a document entitled Employee 13 Acknowledgment? 14 A. Yes. 15 Q. And does this bear your signature? 16 A. Yes. 17 Q. And is it dated July 16th, 2017? 18 A. Yes. 19 Q. And whose signature is below yours? 20 A. At the time the local supervisor was Jeff 21 somebody. I forget. I don't remember his 22 name. 23 Q. Okay. And is this form acknowledging that you 24 were provided with a copy of PTI's driver's 25 manual, you read it, and understand the</p>	<p>1 do in the case of an accident or emergency? 2 A. Yes. 3 Q. You understood the -- the safe working 4 procedures you were to follow and the 5 precautions to be taken when working, 6 especially with regard to vehicle hazards, 7 slips and fall hazards, as well as any other 8 unsafe conditions; right? 9 A. Oh, there it is. Okay. Slips and falls 10 hazards, yes. 11 Q. Okay. Could you just read the next sentence. 12 A. I understand that this manual cannot cover 13 every possible job-related hazard or exposure 14 to injury and it is intended to identify the 15 most common work-related hazards and list safe 16 work procedures to address these hazards. I 17 understand whom I am to ask if I have any 18 questions on any of these concerns. Yes. 19 Q. Okay. And -- and who did -- who were you to 20 ask if you had any questions or concerns? 21 A. Jeff, the immediate supervisor. 22 MR. COHEN: Okay. 23 (Exhibit 6 marked for identification.) 24 BY MR. COHEN: 25 Q. I'm showing you what I've marked as Exhibit 6</p>
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<p>1 contents of the same, including the railroad 2 radio rules, the employee safety and health 3 guidelines, and other policies of PTI? 4 A. Yes. 5 Q. And you acknowledge that PTI is committed to 6 providing a safe and healthful workplace, a 7 safe and healthful workplace is one of the 8 highest priorities of PTI? 9 A. Whatever it says, that -- I assume that -- 10 that's what it says. 11 Q. Okay. And if you look at the third paragraph 12 of this employee acknowledgment, can you just 13 read that out loud. 14 A. The information in this manual constitutes a 15 written injury and illness program. While -- 16 while PTI cannot anticipate every -- anticipate 17 every workplace hazard, the general principles 18 in this manual should guide your conduct. To 19 be safe, you must never stop being safety 20 conscious. Yeah. 21 Q. Okay. And you understood that sentence, and 22 you agreed with it? 23 A. Yes. 24 Q. Okay. And then the next paragraph, Paragraph 25 4, you acknowledge that you understand what to</p>	<p>1 for identification. 2 A. Okay. 3 Q. Is this the PTI Driver's Manual that you 4 received from PTI in -- during your -- or 5 before your -- you began your employment? 6 A. At first glance -- 7 MR. BANKER: Before he answers that 8 question, I would again object to the use of 9 any document that has not been produced in 10 discovery as an exhibit to this deposition or 11 asking any questions about it. 12 BY MR. COHEN: 13 Q. Go ahead. 14 A. I seem to recognize it as the one handed to 15 every employee in -- in a yellow form binder. 16 Q. Okay. If you could turn your attention to the 17 last page of this exhibit. Is this the 18 Employee Acknowledgment you signed and your 19 supervisor signed? 20 A. I assume so. 21 Q. Okay. Do you have any reason to believe that 22 it's -- it's not the -- 23 A. At first glance, no. 24 Q. Okay. If you could turn your attention to Page 25 7. What, according to the handbook, is the --</p>

37 (Pages 145 to 148)

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<p>1 the safety mission of PTI?</p> <p>2 A. It's to ensure we have safe, efficient,</p> <p>3 well-trained drivers who serve the needs of our</p> <p>4 customers and reduce, eliminate accidents and</p> <p>5 injuries.</p> <p>6 Q. Okay. Do you agree with that statement?</p> <p>7 A. Sure.</p> <p>8 Q. All right. If you could review Pages 11 and</p> <p>9 12, and could you tell -- is it fair to say</p> <p>10 that you had your job to do as a driver, and</p> <p>11 the employees of UP had their jobs to do, and</p> <p>12 you weren't to -- to help them with their job?</p> <p>13 A. They're two distinct jobs. We were not allowed</p> <p>14 to think in terms of UP employee activities</p> <p>15 other than to make sure that they didn't need</p> <p>16 our help.</p> <p>17 Q. Okay. When you say --</p> <p>18 A. You're a cab driver.</p> <p>19 Q. Was your job to help them in any other way than</p> <p>20 being their cab driver?</p> <p>21 A. I don't know where to start and where to end on</p> <p>22 this one.</p> <p>23 Q. Let me -- let me rephrase the question. What</p> <p>24 did you see your job as being as a -- a driver</p> <p>25 for PTI?</p>	<p>1 Q. Turning your attention to Item No. 1 in the</p> <p>2 bolded sentence at the end where it --</p> <p>3 A. Awareness, common sense.</p> <p>4 Q. Yes. Could you please read it.</p> <p>5 A. And caution can prevent most accidents from</p> <p>6 occurring.</p> <p>7 Q. Relative to the incident we've been talking</p> <p>8 all -- about all day, was that an accident?</p> <p>9 A. No.</p> <p>10 Q. Okay. Do you consider that to be an injury at</p> <p>11 all?</p> <p>12 A. No.</p> <p>13 Q. All right. Turning your attention to Page 24,</p> <p>14 Section 7, Safety Rules for All Employees.</p> <p>15 Does this provide some enumerated safety rules?</p> <p>16 A. Absolutely. Employees must observe and obey</p> <p>17 all safety rules and regulations. Disciplinary</p> <p>18 action may result from violation of those</p> <p>19 safety rules and so on. Sure.</p> <p>20 Q. Okay. And Item A is that all employees shall</p> <p>21 follow the safe practices and rules contained</p> <p>22 in this manual and such other rules and</p> <p>23 practices communicated from time to time by</p> <p>24 T -- PTI management; is that --</p> <p>25 A. True.</p>
Page 150	Page 152
<p>1 A. You're responsible for transporting the crew to</p> <p>2 wherever they're asking you to go.</p> <p>3 Q. Okay. And would it be fair to say turning to</p> <p>4 Page 12, Item 34, that you're not to assist the</p> <p>5 railroad crews in the performance of their</p> <p>6 duties?</p> <p>7 A. Oh, absolutely.</p> <p>8 Q. Okay. And -- and you weren't supervising the</p> <p>9 railroad crews; is that correct?</p> <p>10 A. Absolutely.</p> <p>11 Q. And you didn't -- did you see yourself as being</p> <p>12 responsible for their conduct or their safety?</p> <p>13 A. No. Well, their safety maybe, but...</p> <p>14 Q. Insofar as they were in your -- in your van?</p> <p>15 A. True.</p> <p>16 Q. Okay. Were you responsible for the safety of</p> <p>17 UP's employees when they were outside your van?</p> <p>18 A. No.</p> <p>19 Q. I want to turn your attention to Page 22 of</p> <p>20 this exhibit. And is this a section of the</p> <p>21 manual entitled Safety and Health Guidelines,</p> <p>22 Illness and Injury Prevention Program?</p> <p>23 A. Okay.</p> <p>24 Q. Is that correct?</p> <p>25 A. Yes.</p>	<p>1 Q. -- correct? Okay. Do you believe you followed</p> <p>2 all of the safety rules that were provided to</p> <p>3 you by PTI?</p> <p>4 A. Always.</p> <p>5 Q. Okay. Item B directs you to report all unsafe</p> <p>6 conditions or practices to their man -- to your</p> <p>7 manager; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Are you aware of any unsafe conditions</p> <p>10 or practices relative to anything we've been</p> <p>11 talking to today in respect to PTI?</p> <p>12 A. The only thing that comes to mind with respect</p> <p>13 to unsafe is people that get within four feet</p> <p>14 of a train standing or moving.</p> <p>15 Q. Okay. And we haven't talked of anything -- we</p> <p>16 haven't talked about that at all today, have</p> <p>17 we?</p> <p>18 A. Well, that to me is a major safety</p> <p>19 consideration for myself and the UP employees.</p> <p>20 Q. Okay. And turning your attention to Page 26,</p> <p>21 Paragraph 10, the second section of that</p> <p>22 paragraph, could you read that.</p> <p>23 A. The information in this manual consists --</p> <p>24 constitutes a written injury and illness</p> <p>25 program. While PTI cannot anticipate every</p>

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1 workplace hazard, the general principals (as
2 written) in this manual should guide your
3 conduct. To be safe, you must never stop being
4 safety conscious.
5 Q. Okay. Turning your attention to Paragraph 11,
6 the last sentence of the first -- I'm sorry --
7 Section 11, the last paragraph of the first
8 section. Starting with All Employees, could
9 you read that.
10 A. Should start safety training by reading this
11 manual and discussing any problems or safety
12 concerns with your branch manager.
13 Q. Okay. And what did you understand that to
14 mean?
15 A. Well, being a smart, old fart, I had no
16 questions regarding what it stated because to
17 me I've seen it too many times, not just with
18 PTL.
19 Q. And what do you mean by that?
20 A. Experience has no substitute.
21 Q. And would that be true with -- as to common
22 sense as well?
23 A. Most people don't have common sense today.
24 Q. Okay. Turning your attention to Page 27,
25 Paragraph 12. And does it state, If you see

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1 managers do something unsafe, please tell that
2 person?
3 A. Yes.
4 Q. Okay. And would you say that you -- you
5 followed that guidance?
6 A. Absolutely. We have not seen PTI managers in
7 eons.
8 Q. I'm going to turn your attention to Page 28 and
9 the section regarding first-aid kits. And
10 what's the -- do you see where it states,
11 General first-aid techniques include?
12 A. Um-hum.
13 Q. Okay. And what's the first item?
14 A. Where? Where does --
15 Q. Under A.
16 A. Under A. Call for medical help with any
17 incident that appears serious.
18 Q. Okay. And if you turn to the next page,
19 there's a section about slip and falls -- slips
20 and falls; correct?
21 A. Yes.
22 Q. All right. And then after that is -- is
23 vehicle safety?
24 A. And where is that?
25 Q. The next page.

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1 A. Okay.
2 Q. All right. Okay. And we've talked about this
3 a little bit, but turning your attention to
4 what you've previously told Mr. Banker and Mr.
5 Hayden. When is the first time relative to Mr.
6 -- Mr. Tischer that you in your own mind
7 believed that there was a serious medical
8 issue?
9 A. The first time I would say when the ambulance
10 decided to take him away.
11 Q. And why did you -- why did you think at that
12 point there was a serious medical issue?
13 A. Well, because they're obviously going to take
14 him to a higher medical, you know --
15 Q. Okay.
16 A. -- attention.
17 Q. And did you believe that the persons manning
18 that ambulance had medical training?
19 A. Hopefully they all do.
20 Q. Did you have any medical training?
21 A. None --
22 Q. Okay.
23 A. -- such.
24 Q. Now, Mr. Hayden led you through your
25 observations as to Mr. Tischer. Do you recall

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1 that?
2 A. Yes.
3 Q. And your first observation was that he was
4 having trouble with his seat belt; is that
5 correct?
6 A. Yes.
7 Q. All right. At that time did you believe that
8 Mr. Tischer was having trouble with his seat
9 belt because he was subject to a serious
10 medical condition that required medical
11 assistance?
12 A. No.
13 Q. Okay. The second observation that Mr. Hayden
14 led you through is when you saw Mr. Tischer
15 stumbling on his way back from the porta potty
16 --
17 A. True.
18 Q. -- is that correct?
19 A. Yes.
20 Q. Okay. And you noted that many people saw him
21 stumbling; is that correct?
22 A. Yes.
23 Q. All right. Who are those people that also saw
24 him stumbling?
25 A. You'll have to ask Marvin because I don't

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<p>1 remember anybody present besides Neil. 2 Q. Okay. 3 A. His engineer. 4 Q. All right. 5 A. Okay. But the other crew members stood around 6 Marvin. I don't know how many there were. 7 There were several. 8 Q. You mentioned earlier that the gravel was 9 uneven. 10 A. Yes. 11 Q. You noticed that? 12 A. Oh, yes. 13 Q. Okay. Did you believe that Mr. Tischer having 14 stumbled on his way back from the porta potty 15 was a serious medical condition or -- or 16 indicated a serious medical condition that 17 required immediate medical assistance? 18 A. No. 19 Q. Okay. The next incident or observation that 20 Mr. Hayden noted to you was when Mr. Tischer 21 vomited while he was in your van; is that 22 correct? 23 A. Yes. 24 Q. And we went through Exhibit 3 quite a bit, 25 which is the GPS timeline; right?</p>	<p>1 the notation for the entry at 8:38 p.m.? Is it 2 98 -- 3 A. .4, yes. 4 Q. -- .4? And would that be 98.4 miles? 5 A. No. 6 Q. Okay. Turning back to the first page, the 7 column headings, does it say Distance M? 8 A. Yes. 9 Q. And would that mean distance in miles? 10 A. I assume so. 11 Q. Okay. And at the top where it says Total 12 Distance in mi -- M, would that mean total 13 distance in miles? 14 A. I would think so, yes. 15 Q. Okay. And is the -- is the notation 100.9? 16 A. Well, that might be for -- for what? For 12 17 a.m. to 11:59 p.m. 18 Q. This is under the -- I'm sorry. Go ahead. 19 A. Up top. 20 Q. Yes. And this is under a summary tab; is that 21 correct? 22 A. Yes. 23 Q. Okay. And is it fair to say that that meant 24 that the van drove 100.9 miles during the given 25 time frame?</p>
Page 158	Page 160
<p>1 A. Um-hum. 2 Q. And you noted that at the point that you 3 observed Mr. Tischer vomiting you were in sight 4 of the depot; is that right? 5 A. True. 6 Q. Okay. And there was some question as to which 7 notation corresponded with that event; right? 8 A. Yes. 9 Q. There were two parked notations in -- 10 A. Well, working backwards time-wise because the 11 depot is a hundred yards from where he was 12 finishing his vomiting, it -- it could only be 13 the last minute of stop. 14 Q. And that's exactly what I was going to go 15 through with you. I want you to take a look at 16 Exhibit 3. I want you to look at the first 17 page of Exhibit 3. Do you see the column 18 labeled Distance M? 19 A. 100.9. Is that what it says? 20 Q. No. The actual labels on the columns on top. 21 A. Oh, okay. So what was the question again? 22 Q. Do you see the column labeled -- 23 A. Distance, yes, I see it. 24 Q. Okay. And I want you to turn to Page 6 of this 25 exhibit, and under the Distance column what is</p>	<p>1 A. Yes. 2 Q. Okay. Now turning back to Page 6 -- I -- I'm 3 sorry. Strike that. Go -- if you could turn 4 to Page 7, the last notation under the Distance 5 column is 100.9 miles. That's the last stop; 6 correct? 7 A. Right. 8 Q. Okay. The second-to-last parked notation 9 occurred at 8:38 p.m. on Page 6, and the 10 Distance column states 98.4 miles; correct? 11 A. Yes. 12 Q. Okay. So is it fair to say then when the van 13 was parked at that point at 8:38 p.m., it was 14 approximately two miles away from the depot? 15 A. Yes. 16 Q. Okay. The last parked notation before -- at 17 8:49 p.m., would it be fair to say that that 18 parked notation occurred when the van was .2 19 miles away from the depot? 20 A. Yes. 21 Q. And that would be -- 22 A. This is where he was finishing his vomiting. 23 Q. Because that would be in sight of the depot? 24 A. Right. .2 miles. Yeah. 25 Q. All right. Now, Mr. Hayden, when he was going</p>

40 (Pages 157 to 160)

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<p>1 through the various observations you made, 2 noted that you had observed Mr. Tischer at that 3 point explosively vomiting; is that correct? 4 A. Um-hum. 5 Q. Did you think that at that point in time that 6 Mr. Tischer explosively vomiting indicated a 7 serious medical condition that required 8 immediate -- immediate medical help? 9 A. Not necessarily. I've -- I've been there many 10 a time, and, you know, I'm still smiling and 11 walking, so -- 12 Q. Okay. 13 A. -- it's not an indication in my mind of a 14 serious medical condition. 15 Q. Okay. 16 A. It may have been something he ate. I don't 17 know. 18 Q. All right. And Mr. Hayden said -- asked you 19 why -- you know, confirmed with you that you 20 didn't call 911 at that point; is that correct? 21 A. Well, because I knew that Marvin was behind me, 22 and I was within 2 -- .2 miles of the depot. 23 Q. Okay. And you knew that Marvin -- how far 24 behind you was Marvin? 25 A. Okay. I parked in front of the depot front</p>	<p>1 Q. Okay. And is that the first time you believed 2 at that point in time that Mr. Tischer had a 3 serious medical condition? 4 A. I still wasn't certain. When the ambulance 5 came and examined him and then took him away, 6 at that point, you know, I was hoping that 7 there's nothing serious, but I had no idea what 8 was occurring to him. 9 Q. Okay. And you -- you noted that Mr. Tischer 10 was speaking normally? 11 A. Yes. 12 Q. And you didn't observe his face drooping; 13 correct? 14 A. As far as I can remember, no. 15 Q. Okay. And, to your knowledge, are those signs 16 of a stroke? 17 A. Face drooping might be, yes. 18 Q. Okay. And PTI didn't have to give you any 19 specific training as to what would be signs of 20 a -- signs of a stroke that would require you 21 to call for an ambulance or take him to the 22 hospital; is that right? 23 A. When you -- the way you started the question I 24 had -- can you repeat it, please? 25 Q. Sure. PTI didn't need to give you training as</p>
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<p>1 entrance, unlocked the door, went inside, 2 checked the management side, checked the 3 employee side, nobody there, came back out. At 4 which time Marvin was arriving, so that's no 5 more than a minute or two. 6 Q. Okay. And how long did it take after Marvin 7 arrived after a minute or two that the police 8 arrived? 9 A. Now you're -- now you're testing my 10 understanding of the detail because Marvin and 11 I were struggling with Jake, trying to get him 12 back into the van off the floor. And as we 13 were wondering what to do next, the police 14 arrived, so that's, what, two to five minutes. 15 Q. Okay. 16 A. Something like that. 17 Q. So one to two minutes until Marv arrived -- 18 Marvin arrived, and two to five minutes until 19 the police arrived? 20 A. My guesstimate, yes. 21 Q. Okay. Now, Mr. Hayden also noted that when you 22 arrived back from the depot after not finding 23 anybody there, you noted that Mr. Tischer was 24 on the ground; correct? 25 A. Outside -- outside the vehicle, yeah.</p>	<p>1 to when you needed to take -- 2 A. Well, if I asked you that, didn't need to give 3 me training, what would you say? Training is 4 always required in my mind. 5 Q. Okay. 6 A. So, yeah, they should have, but they didn't. 7 Q. Okay. Did -- you're not a medical 8 professional; correct? 9 A. No. 10 Q. Okay. 11 A. True. 12 Q. And you acknowledge that PTI can't train you 13 for -- for every medical -- 14 A. Well -- 15 Q. -- situation that can arise? 16 A. -- PTI, if you look at my employment history, 17 is only one of many companies that had not 18 given, you know, what do you do in a case of a 19 stroke -- 20 Q. Sure. 21 A. -- type training. And so it didn't send out in 22 my mind as, you know, necessary, but it wasn't. 23 Q. And they didn't give you training, for 24 instance, what to do in -- in case of having 25 noticed a diabetic emergency; right?</p>

41 (Pages 161 to 164)

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1 A. Absolutely not, no.
 2 Q. Okay.
 3 A. Or even a heart attack.
 4 Q. All right. Would it be fair to say that they
 5 gave you training regarding what might be
 6 common -- common workplace emergencies and
 7 injuries and accidents?
 8 A. Well, that to me is obviously visible for which
 9 you don't need training. If you stand within
 10 four feet of or less than four feet of a moving
 11 train, you're asking to be knocked down. Okay.
 12 So as an example.
 13 Q. I understand. Is what occurred to Mr. Tischer
 14 a workplace injury?
 15 A. Not in my mind.
 16 Q. Okay. Was it a workplace accident?
 17 A. It was not an accident in my mind.
 18 Q. Okay. And your -- your understanding is that
 19 people -- it is your understanding that you now
 20 know that Mr. -- Mr. Tischer had a stroke?
 21 A. Yes.
 22 Q. And I think you mentioned before that you know
 23 people that have had strokes before?
 24 A. Yes.
 25 Q. And strokes can occur at a workplace or --

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1 A. All the -- it can occur anywhere anytime to
 2 anybody no matter what age.
 3 Q. Right, right. It's not necessarily something
 4 that occurs --
 5 A. It's not predictable.
 6 Q. Right. And I believe it was your testimony
 7 that you -- you haven't actually ever seen a
 8 person have a stroke; is that correct?
 9 A. True.
 10 Q. All right.
 11 A. I've met them after their treatment and had
 12 difficulty speaking.
 13 Q. Okay. You mentioned that you made a report to
 14 Jeff, the local manager, by phone?
 15 A. Yes.
 16 Q. What did you tell him?
 17 A. Well, just a very short version of what we've
 18 been saying here, discussing, to which he had,
 19 you know, no comment, as far as I can remember,
 20 because he was taken to -- by ambulance to
 21 wherever.
 22 Q. Okay. Is it fair to say that when you noticed
 23 that there was an issue with Mr. Tischer, you
 24 told Mr. Marvin?
 25 A. At the time he was ready to send them back to

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1 Norma, I said, No, he's not well, don't send
 2 Tischer.
 3 Q. Okay. And did you consider your obligation to
 4 be fulfilled at that point to Mr. Tischer?
 5 A. Well, as a cab driver and the manager present,
 6 I would not step on his authority in making a
 7 decision that he -- was purely his in my mind.
 8 Q. Okay. And what decision is that?
 9 A. Well, what to do with a questionable person
 10 who's obviously not well.
 11 MR. COHEN: Okay. I don't have any
 12 further questions.
 13 BY MR. BANKER:
 14 Q. Just one point of clarification. I want to
 15 make sure I understand. So this Exhibit 3, the
 16 GPS report, you know, you've -- you've been
 17 asked a number of questions by all of the
 18 counsel here. But when I was asking the
 19 questions, I -- I don't know what this report
 20 is, so I asked you to assume --
 21 A. First time I've seen it.
 22 Q. Sure. I asked you to assume for the purpose of
 23 my questions that let's assume that this is a
 24 GPS report for the PTI vehicle --
 25 A. Exactly, yeah.

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1 Q. -- at issue. And in answering Mr. Hayden's
 2 questions and Mr. Cohen's questions, have you
 3 proceeded with that same assumption that
 4 we're --
 5 A. Which is?
 6 Q. -- we're assuming that this is a GPS report for
 7 the PTI vehicle that you were driving?
 8 A. The word "assume," you're familiar with what it
 9 stands for?
 10 Q. I am.
 11 A. Okay. I don't need to emphasize. But looking
 12 at the heading, I'm assuming that this is a
 13 day's activity report.
 14 Q. Sure. But I'm -- no one has provided you any
 15 additional --
 16 A. First time I'm seeing it.
 17 Q. -- information in terms of their asking
 18 questions? And so if it is, in fact, the PTI
 19 report, you've been asked questions about it;
 20 if it turns out that it's not the PTI report,
 21 then we've all assumed something and gone down
 22 this path.
 23 A. Right.
 24 Q. And you're not -- sitting here today, you're
 25 not able to say whether it is or isn't a

42 (Pages 165 to 168)

<p style="text-align: right;">Page 169</p> <p>1 meaningful document relating to the PTI vehicle</p> <p>2 that you were operating that day?</p> <p>3 A. True.</p> <p>4 Q. Do you know how -- if -- if you were to take</p> <p>5 that document and try to verify, do you know</p> <p>6 how you'd go about that with PTI?</p> <p>7 A. Verified in what sense?</p> <p>8 Q. If I wanted to figure out whether this is a GPS</p> <p>9 report for the PTI --</p> <p>10 A. Well, I'd have to be assured that this is a</p> <p>11 genuine PTI article.</p> <p>12 Q. Sure. But --</p> <p>13 A. Once having been assured, I can then look at</p> <p>14 the details and say, I can see. Yeah.</p> <p>15 Q. And all I'm asking is do you know what</p> <p>16 information on this Exhibit 3 you might use to</p> <p>17 tie it in to the particular vehicle that you</p> <p>18 were operating that day?</p> <p>19 A. Other than the mobile device, which may be the</p> <p>20 company phone or the tablet or what else, I</p> <p>21 don't know.</p> <p>22 Q. Okay. So sitting here today, you're not able</p> <p>23 to shed any light on that?</p> <p>24 A. I'm not.</p> <p>25 MR. BANKER: Okay. I don't have any</p>	<p style="text-align: right;">Page 171</p> <p>1 THE WITNESS: Sure.</p> <p>2 MR. COHEN: I just have one further</p> <p>3 question.</p> <p>4 BY MR. COHEN:</p> <p>5 Q. Going back to Page -- Exhibit 5, the last page.</p> <p>6 This is a document entitled CTCA Acknowledgment</p> <p>7 of Training Form.</p> <p>8 A. Um-hum.</p> <p>9 Q. And does this bear your signature at the end?</p> <p>10 A. Yes.</p> <p>11 Q. And does this list some of the training you</p> <p>12 received from PTI?</p> <p>13 A. Defensive driving course, yes; fatigue</p> <p>14 management, yes; operation lifesaver; whatever,</p> <p>15 RI -- RYS is; operation lifesaver, I don't</p> <p>16 remember the details of that.</p> <p>17 Q. Intermodal training?</p> <p>18 A. Yes.</p> <p>19 Q. Crew safety briefing?</p> <p>20 A. Yes.</p> <p>21 Q. And it looks like all this training occurred at</p> <p>22 two points during 2017?</p> <p>23 A. I have a question in my mind is why does it</p> <p>24 start with date 7/31 up top and ends with 7/31,</p> <p>25 but in between the classroom activities are</p>
<p style="text-align: right;">Page 170</p> <p>1 further questions.</p> <p>2 BY MR. HAYDEN:</p> <p>3 Q. Just a follow-up on -- on that line --</p> <p>4 A. Sure.</p> <p>5 Q. -- of questioning. When I was asking you the</p> <p>6 questions and -- and walking you through the</p> <p>7 timeline, it was consistent -- the -- the data</p> <p>8 in the GPS report is consistent with your</p> <p>9 testimony about the relative stops and the</p> <p>10 duration of those stops --</p> <p>11 A. Right.</p> <p>12 Q. -- isn't that correct? Okay. Thank you.</p> <p>13 A. So to use this for my purposes, we would have</p> <p>14 to go backwards from the end. Because up top</p> <p>15 it starts at 12 a.m., so there is a shift or</p> <p>16 more activity before my starting on here.</p> <p>17 Q. So if we looked -- if -- and -- and we sort of</p> <p>18 did that a little bit. We looked at the last</p> <p>19 parking event, which was at 8:53 p.m., and</p> <p>20 looked at those details on the balance of Page</p> <p>21 7 and all of Page 6 leading up to it, and that</p> <p>22 8:53 stop is consistent with the time at which</p> <p>23 you got to the --</p> <p>24 A. Seems to be, yes.</p> <p>25 MR. HAYDEN: Okay. Thank you, sir.</p>	<p style="text-align: right;">Page 172</p> <p>1 8/1?</p> <p>2 Q. But it does bear your initials under each</p> <p>3 training; is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. All right. And all this training occurred</p> <p>6 before the incident we've been discussing</p> <p>7 today?</p> <p>8 A. Yes.</p> <p>9 MR. COHEN: All right. No further</p> <p>10 questions.</p> <p>11 MR. BANKER: Do you want to advise him</p> <p>12 about reading and signing or...</p> <p>13 MR. COHEN: Sure. You can either sign</p> <p>14 the -- reserve signature to today's deposition,</p> <p>15 in which case the court reporter will send you</p> <p>16 a transcript, and you can review it to make</p> <p>17 sure that everything is accurate, or you can</p> <p>18 waive your signature. That's up to you.</p> <p>19 THE WITNESS: Well, I'd like to see</p> <p>20 because we -- from experience, we've seen some</p> <p>21 embellishment. So, yes, I will sign it when I</p> <p>22 see it.</p> <p>23 MR. COHEN: You'd like to reserve your</p> <p>24 signature?</p> <p>25 THE WITNESS: Sure.</p>

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1 VIDEOGRAPHER: This concludes today's
 2 deposition of Chaz Lux consisting of two media.
 3 We are off the record at 5:06 p.m.
 4 (Proceedings concluded at approximately
 5 5:06 p.m.)
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1 STATE OF WISCONSIN)
)ss

2 COUNTY OF EAU CLAIRE)
 3

4 I, Stephanie Peil, Notary Public in and for the
 5 State of Wisconsin, certify there came before me the
 6 deponent herein, namely Chaz Lux, who was by me duly
 7 sworn to testify to the truth and
 8 nothing but the truth concerning the matters in this
 9 cause.

10 I further certify that the foregoing transcript
 11 is a true and correct transcript of my original
 12 stenographic notes.

13 I further certify that I am neither attorney or
 14 counsel for, nor related to or employed by any of
 15 the parties to the action in which this deposition
 16 is taken; furthermore, that I am not a relative or
 17 employee of any attorney or counsel employed by the
 18 parties hereto or financially interested in the
 19 action.

20 IN WITNESS WHEREOF, I have unto set my hand and
 21 affixed my Notarial Seal this 1st day of August,
 22 2019.
 23
 24

25 _____
 Stephanie J. Peil, Notary Public

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